

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4
IN RE: NATIONAL MDL No. 2804
5 PRESCRIPTION OPIATE
LITIGATION Case No.
6 1:17-MD-2804

7
THIS DOCUMENT RELATES TO Hon. Dan A. Polster
8 ALL CASES

9 *****

10
11 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
12 CONFIDENTIALITY REVIEW
13 VIDEOTAPED DEPOSITION OF THOMAS S. MOFFATT

14
15 Tuesday, January 15th, 2019
16 8:04 a.m.

17
18 Held At:
19 Omni Hotel
20 One West Exchange Street
21 Providence, Rhode Island

22
23 REPORTED BY:
24 Maureen O'Connor Pollard, RMR, CLR, CSR

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1 P R O C E E D I N G S

2

3 THE VIDEOGRAPHER: We are now on the
4 record. My name is Robert Sweig, and I'm a
5 videographer for Golkow Litigation Services.

6 Today's date is January 15, 2019, and
7 the time is 8:04 a.m.

8 This video deposition is being held in
9 Providence, Rhode Island in the matter of In Re:
10 National Prescription Opiate Litigation pending
11 before the United States District Court for the
12 Northern District of Ohio, Eastern Division.

13 The deponent is Thomas Moffatt.

14 Counsel appearances will be as noted
15 on the stenographic record.

16 Our court reporter is Maureen Pollard,
17 who will now swear in our witness.

18

19 THOMAS S. MOFFATT,
20 having been duly sworn, was examined and
21 testified as follows:

22 EXAMINATION

23 BY MR. ELSNER:

24 Q. Good morning.

1 A. Good morning.

2 Q. My name is Michael Elsner, I'm from
3 the law firm of Motley Rice, and I represent the
4 plaintiffs in these actions.

5 Can you please state your name?

6 A. Thomas S. Moffatt, M-O-F-F-A-T-T.

7 Q. And what is your date of birth?

9 Q. And where do you live, sir?

10 A. Kingston, Rhode Island.

11 Q. And you graduated from college with a
12 degree in history, is that right?

13 A. Yes.

14 Q. Did you take any pharmaceutical
15 courses in college?

16 A. No.

17 Q. Did you take any courses that related
18 to pharmacy distribution or regulations of
19 pharmacies?

20 A. No.

21 Q. What about courses in controlled
22 substances or other narcotics?

23 A. No.

24 Q. You then took a few years off and you

1 went to law school, is that right?

2 A. I took a few years off, then I went to
3 law school.

4 Q. What did you do in that intervening
5 period?

6 A. I worked, principally I worked at
7 Brother Industries in Nagoya, Japan as an
8 English consultant, and then I came back and
9 worked as a paralegal for a year in a personal
10 injury firm.

11 Q. What was the name of the firm?

12 A. Law offices of S. George Bromberg.

13 Q. And where was that?

14 A. Cambridge, Massachusetts.

15 Q. And then you attended Northeastern
16 University School of Law, is that right?

17 A. Correct.

18 Q. Did you graduate from law school?

19 A. Yes.

20 Q. And did you take the Bar exam when you
21 graduated?

22 A. Yes.

23 Q. Are you a licensed attorney today?

24 A. Yes.

1 Q. What states are you licensed to
2 practice?

3 A. I'm licensed in Massachusetts, and
4 then I'm registered as an out-of-state in-house
5 counsel in Rhode Island.

6 Q. In law school did you take any courses
7 in pharmaceutical law or regulations of
8 pharmacies?

9 A. No.

10 Q. After law school you went to work for
11 Mintz Levin, is that right?

12 A. Correct.

13 Q. And what was your area of practice
14 when you worked there?

15 A. I was a corporate attorney.

16 Q. Okay. What years were you there?

17 A. I was there from 1993, the fall of '93
18 through August -- or July of '97.

19 Q. What type of work did you do as a
20 corporate attorney for Mintz Levin?

21 A. A wide variety of corporate matters,
22 transactions, securities, general corporate law.

23 Q. Did you deal with any DEA regulations
24 while working at Mintz Levin?

1 A. No.

2 Q. Was CVS a client of Mintz Levin while
3 you were there?

4 A. Yes.

5 Q. Did you work on that -- for CVS while
6 at Mintz Levin?

7 A. No.

8 Q. What type of work did Mintz Levin do
9 for CVS, just generally? I don't need the
10 specifics.

11 A. Generally real estate matters.

12 Q. Is that related to the purchase of
13 various pharmacies, or could you be a little bit
14 more specific without revealing a privilege?

15 A. It was more general real estate
16 matters than acquisitions, as far as I recall.

17 Q. But you didn't --

18 A. I didn't work on any of them, so...

19 Q. Okay. And then you came to work for
20 CVS, is that right?

21 A. Yes.

22 Q. And what year was that?

23 A. That was August of 1997.

24 Q. Okay. What were you hired to do for

1 CVS?

2 A. I was a corporate lawyer.

3 Q. For CVS Health, or what was the name
4 of the entity that hired you?

5 A. CVS Pharmacy, Inc., a Rhode Island
6 corporation.

7 Q. And where were you based?

8 A. In Woonsocket, Rhode Island.

9 Q. Is that where you're based today?

10 A. Yes.

11 Q. How is it that you came to be hired by
12 CVS?

13 A. A long story, but essentially it was
14 the lead real estate partner at Mintz, Levin
15 talking to the general counsel at CVS and the
16 general counsel saying, we're looking for a
17 corporate guy, do you know anybody, and the real
18 estate partner said -- came to me and said, you
19 know, don't take this the wrong way but CVS is
20 looking for a guy like you, and I said, don't
21 take this the wrong way but sign me up, and so I
22 went for an interview, and the rest is history.

23 Q. Okay. Do you recall what the name of
24 your position was when you started at CVS?

1 A. Legal counsel.

2 Q. And how long did you serve in that
3 role?

4 A. Probably three years or so.

5 Q. Okay. Could you give me a sort of
6 snapshot of your work history with CVS from 1997
7 until today and the various positions that
8 you've held for CVS Pharmacy?

9 A. That's a pretty long snapshot. So
10 I've always been a corporate lawyer, general
11 corporate law. I do a wide variety of corporate
12 matters for CVS, always have. For many years I
13 was the only corporate lawyer at CVS. And so I
14 was legal counsel first, then senior legal
15 counsel, then assistant general counsel, vice
16 president and assistant general counsel.

17 Q. If I could just interrupt you real
18 quickly?

19 A. Sure.

20 Q. Can you give me some sense of the
21 years when you became senior legal counsel and
22 then vice president and assistant --

23 A. Senior legal counsel was probably
24 around 2000, somewhere in that time frame.

1 Assistant general counsel would have been around
2 2005 or so. Then I was vice president 2007 or
3 '8, something like that, and for a brief period
4 of time I served as the corporate secretary of
5 the public company. I've been assistant
6 secretary of the public company for several
7 years now. So I've held a variety of titles.
8 My employer has always been CVS Pharmacy, Inc.,
9 and then I have various titles with other
10 entities.

11 Q. You said that you were a corporate
12 secretary for the public company. Is the public
13 company CVS Pharmacy, Inc.?

14 A. No.

15 Q. What is the public company?

16 A. CVS Health Corporation is the current
17 name.

18 Q. And in what position did you serve?
19 You said secretary?

20 A. I was vice president and corporate
21 secretary from 2011 through the end of 2013, and
22 I've been assistant secretary from 2013 to the
23 present, vice president and assistant secretary.

24 Q. Why were you asked, if you know, to

1 hold that position?

2 MR. DELINSKY: I would just like to
3 object on privilege grounds.

4 Mr. Moffatt, if you can answer without
5 disclosing an attorney/client confidence, you
6 can answer. Otherwise I instruct you not to
7 answer.

8 A. I don't know why.

9 BY MR. ELSNER:

10 Q. Was it a result of pending litigation?

11 A. I can say that it was not a result of
12 litigation.

13 Q. Who asked you to serve in that role?

14 A. It would have been Doug Sgarro who was
15 the executive vice president and chief legal
16 officer. The corporate secretary retired from
17 the company, and I became -- I was, you know,
18 kind of his second-in-command, so when he
19 retired I moved up.

20 Q. You also served as the treasurer and
21 secretary of CVS Indianapolis which is the
22 distribution center for CVS in Indiana, is that
23 right?

24 A. I don't recall serving as treasurer.

1 I believe I was secretary.

2 Q. All right. And was that from 2006 to
3 2011?

4 A. That sounds about right. We have many
5 entities, and keeping track of my specific title
6 with each entity is difficult.

7 Q. How many entities do you serve as an
8 officer of for CVS?

9 A. I don't know exactly, but hundreds.

10 Q. Why?

11 A. Mostly for administrative convenience.

12 Q. Administrative convenience to whom?

13 A. To the organization.

14 Q. What organization are you referring to
15 when you say that?

16 A. So there are 800-plus entities in the
17 CVS family of entities, and in order to provide
18 services to those entities I need to be able to
19 sign documents and so forth for the various
20 entities.

21 Q. So it's a convenience -- is it a
22 convenience to CVS Health, or is it a
23 convenience to the entities themselves?

24 A. It's to the entities themselves,

1 because they all -- many of them need licenses,
2 leases, that sort of thing, so it's in order for
3 them to operate properly.

4 Q. When did the Indianapolis distribution
5 center for CVS start operations?

6 A. I don't know exactly. We acquired it
7 in the Revco acquisition, which was just before
8 I joined the company, so in 1997. I'm not sure
9 when it was first built or anything.

10 Q. But then you joined as a secretary of
11 CVS Indiana in 2006, is that right?

12 A. I believe the entity was formed
13 shortly before then, so when the entity was
14 formed I was either secretary or assistant
15 secretary.

16 Q. Who asked you to play that role?

17 A. It would have been my immediate
18 superior, Zenon Lankowsky.

19 Q. How large is the legal department at
20 CVS?

21 MR. DELINSKY: Object to form.

22 A. I don't know exactly, depends on who
23 you count, but in terms of lawyers
24 post-acquisition it's over 100 lawyers, and then

1 there's paralegals and support staff and clerks
2 and so forth, so it's several hundred people.

3 BY MR. ELSNER:

4 Q. Okay. In 2012 you became the
5 president of CVS Indiana, is that right?

6 A. Yes.

7 Q. Why was that?

8 A. It was in connection with the
9 retirement of Mr. Lankowsky.

10 Q. He was the previous president?

11 A. Yes.

12 Q. And have you served as president of
13 CVS Indiana since 2014?

14 A. I believe so. Since before that, I
15 think you said it was 2012.

16 Q. That's right. I just said dates of
17 through 2014, so I was curious whether you
18 continued to perform that role.

19 A. Past that, yes.

20 Q. And you're the president today?

21 A. Yes.

22 Q. All right. Can you explain to me what
23 your duties and responsibilities are as
24 president of CVS Indiana?

1 A. It's principally an administrative
2 function, so CVS Indiana needs a wide variety of
3 licenses and other documents that need to be
4 signed, and I sign documents on behalf of that
5 entity and the other entities.

6 Q. Are there board meetings for CVS
7 Indiana?

8 A. Yes.

9 Q. Do you attend those?

10 A. Yes.

11 Q. How often are those held?

12 A. Annually.

13 Q. Where are they held?

14 A. At CVS headquarters.

15 Q. Who attends the board meetings
16 generally?

17 A. Actually let me take a step back. I
18 was mistaken there. For CVS Indiana it's an LLC
19 that doesn't have a board, so we don't really
20 have board meetings. We have, you know -- the
21 member would meet of CVS Indiana, and the member
22 is a sole member, so I sign -- typically we do
23 actions by written consent of the member, and I
24 execute those.

1 Q. So there are no annual or quarterly
2 meetings of CVS Indiana?

3 A. It doesn't --

4 MR. DELINSKY: Object to form.

5 A. It doesn't have a board, so it doesn't
6 have board meetings.

7 BY MR. ELSNER:

8 Q. But you said that the member signs the
9 documents, and it's all by consent, and you are
10 the member, is that right?

11 A. Well, there's -- a corporation is the
12 member. CVS Pharmacy, Inc. is the member.

13 Q. Okay. Are there minutes of those
14 meetings?

15 A. There would either be minutes, or
16 there would be a consent.

17 Q. Do you recall meetings in which there
18 were minutes taken for CVS Indiana?

19 A. I don't recall all the meetings that I
20 took part in.

21 Q. And have you been to the facility at
22 CVS Indiana?

23 A. No, I have not.

24 Q. Do you interact with the management

1 and staff of CVS Indiana?

2 A. No, not on a regular basis.

3 Q. Do they keep you apprised of the
4 activities of CVS Indiana?

5 A. There are others at CVS that are
6 responsible for operations of the distribution
7 centers. They would keep them apprised. They
8 wouldn't keep me apprised.

9 Q. They don't keep you apprised as
10 president?

11 A. They keep the people that need to be
12 apprised.

13 Q. And generally what are those offices
14 within CVS headquarters that are apprised?

15 A. It would be the logistics department
16 is generally responsible for distribution center
17 operations and transportation.

18 Q. You're also the president of CVS Rx
19 Services, Inc., is that right?

20 A. That's correct.

21 Q. And when have you served in that role?

22 A. I believe since 2012, same time as
23 Indiana.

24 Q. Were you formerly a secretary or

1 treasurer of CVS Rx Services, Inc.?

2 A. I don't recall my exact titles, but in
3 all likelihood I would have been secretary
4 before I became president.

5 Q. What does CVS Rx Services do?

6 A. It was originally formed as the
7 employer of our pharmacists in the various
8 stores.

9 Q. When?

10 A. When was it formed? I don't know
11 exactly. Probably around the late '90s, 1998,
12 '99, something like that, I believe.

13 Q. Okay. So are all pharmacists of CVS
14 and CVS pharmacies employees of CVS Rx Services?

15 A. There are others that are responsible
16 for keeping track of who is employed by who, but
17 my understanding is yes.

18 Q. Okay. And what about the pharmacy
19 itself, is the pharmacy itself organized under
20 CVS Rx Services, or is it just the pharmacists?

21 MR. DELINSKY: Object to form.

22 A. Generally speaking, the pharmacies
23 would be in different store operating entities.

24 BY MR. ELSNER:

1 Q. We received a response to a request,
2 and the response stated that CVS Rx Services
3 distributed hydrocodone combination products
4 into track 1 jurisdictions between April 15,
5 2014 and September 30, 2014, and then it refers
6 to something called the Chemung distribution
7 period. Do you know what that is, the Chemung
8 distribution period?

9 A. I know that we have a distribution
10 center in Chemung, New York.

11 Q. And is that distribution center
12 organized under CVS Rx Services?

13 MR. DELINSKY: Object to form.

14 A. Chemung is operated by CVS Rx
15 Services, Inc.

16 BY MR. ELSNER:

17 Q. Okay. And do you know why CVS was
18 distributing hydrocodone products into Summit
19 counties and Cuyahoga counties in Ohio between
20 April 15th, 2014 and September 30th, 2014?

21 MR. DELINSKY: Object to form.

22 A. I don't know. I don't know that
23 that's the case. I know that others at CVS
24 would have been responsible for which

1 distribution centers would distribute into which
2 stores.

3 BY MR. ELSNER:

4 Q. So as president of CVS Rx Services,
5 what are your roles and responsibilities?

6 A. Again, it's principally administrative
7 to sign various licenses and documents that CVS
8 Rx Services needs to sign.

9 Q. Have you ever been to the Chemung
10 distribution center?

11 A. No, I have not.

12 Q. The whole period of time when you've
13 been operating as the president of CVS Indiana
14 and the president of CVS Rx Services, you always
15 worked out of the office in Rhode Island for
16 CVS, is that right?

17 A. That's correct, I've only worked out
18 of the Woonsocket office.

19 Q. Okay. Are there board meetings or
20 minutes of meetings related to CVS Rx Services?

21 A. Yes.

22 Q. And how often do you meet?

23 A. It would be annually.

24 Q. And where are those meetings held?

1 A. At Woonsocket.

2 Q. Do you receive any compensation from
3 CVS Indiana or CVS Rx Services for your role as
4 president of those entities?

5 A. Unfortunately, no.

6 Q. So all of your payment is from CVS
7 Health?

8 A. It's from CVS Pharmacy is my employer,
9 and it's as a corporate attorney.

10 Q. Can you explain to me the relationship
11 between CVS Pharmacy, CVS Health, and CVS
12 Indiana, and CVS Rx Services?

13 MR. DELINSKY: Object to form.

14 A. That's a very broad question. CVS
15 Health Corporation is the public company. It's
16 a holding company. It's formed in Delaware and
17 doesn't have any employees. CVS Pharmacy is our
18 main operating company. It's a Rhode Island
19 corporation. It employs me. It employs a
20 number of people. And then CVS Pharmacy is the
21 parent company to Rx Services and CVS Indiana
22 and a large number of other entities.

23 BY MR. ELSNER:

[illegible]

- [REDACTED]
- ■ [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- ■ [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
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- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- ■ [REDACTED]
- [REDACTED]
- ■ [REDACTED]
- [REDACTED]
- [REDACTED]
- ■ [REDACTED]

1 Q. I think you also said that you have
2 responsibility at CVS for licensing issues.
3 Does that include DEA licenses?

4 MR. DELINSKY: Object to form.

5 A. So I said that I sign documents
6 related to licensing, so it would -- well, I
7 also have people that work for me that are
8 responsible for signing DEA documents, but I
9 have signed DEA documents in the past.

10 BY MR. ELSNER:

11 Q. Are you the head of the licensing
12 division for CVS?

13 MR. DELINSKY: Object to form.

14 A. We don't have a licensing division, so
15 licensing is one of our functions in the legal
16 department, and the licensing -- the head of
17 licensing is a licensing director, and she
18 reports to me.

19 BY MR. ELSNER:

20 Q. Okay. And how many people are under
21 her?

22 A. 30 plus.

23 Q. And who is that licensing director?

24 A. Her name is Linda Cimbron.

1 Q. So I'm just taking a look at your
2 LinkedIn page, and it's written here, it says --
3 it describes you as the vice president,
4 assistant secretary and assistant general
5 counsel for CVS Health Corporation. And that's
6 your current role, is that right?

7 A. That's my role with CVS Health
8 Corporation, yes.

9 Q. And then it says under here, it says
10 Licensing, and it says "Oversees the licensing
11 department which obtains and maintains all
12 licenses for the company's 10,000-plus
13 facilities, over 150,000 licenses," is that
14 correct?

15 A. That's correct. As I said, Linda
16 Cimbron, licensing director, reports to me. So
17 I oversee the licensing function.

18 Q. So you oversee the licensing
19 department?

20 A. Yes.

21 Q. And then it says "Interacts with
22 government officials including DEA, state boards
23 of pharmacy, and alcohol boards." Is that
24 accurate?

1 A. It was more accurate a couple years
2 ago when that was written. Now we have a board
3 of pharmacy practice that does a lot more of the
4 interaction with the boards of pharmacy. We
5 also have an attorney that works on government
6 investigations, including DEA. So, you know,
7 it's not as accurate today as it was several
8 years ago.

9 Q. When was this written?

10 A. I don't remember. A couple years ago,
11 I think. I might have updated numbers, but I
12 haven't changed a lot of it.

13 Q. Every CVS distribution center,
14 including CVS Indiana, holds a DEA license, is
15 that right?

16 A. I don't recall if they all have --
17 take a step back. We used to have distribution
18 centers that had full registrations, and then we
19 had other facilities that did what was called
20 cross-talking, so they wouldn't necessarily have
21 drugs in the facility. I don't recall what the
22 current structure of the distribution centers
23 is, so I don't know if every one of them has.

24 Q. Okay. But in order to distribute a

1 controlled substance, you need a DEA license to
2 do so, is that right?

3 MR. DELINSKY: Object to form.

4 A. Yes, I believe that's right.

5 BY MR. ELSNER:

6 Q. And CVS Indiana had a DEA license to
7 distribute controlled substances, is that right?

8 A. It definitely had a DEA registration,
9 yes.

10 Q. And is the same true for the CVS
11 facility, the distribution center in Chemung,
12 New York?

13 A. Yes.

14 Q. What about CVS Pharmacy, does CVS
15 Pharmacy have its own DEA license?

16 MR. DELINSKY: Object to form.

17 A. So the DEA registrations are by
18 facility, so there are facilities that CVS
19 Pharmacy, Inc. operates that have DEA
20 registrations, there are actually many.

21 BY MR. ELSNER:

22 Q. And is it CVS Pharmacy which holds
23 those licenses, or it's the entities themselves?

24 A. The entities them -- the entities that

1 operate the facilities would hold the licenses,
2 so in some instances that is CVS Pharmacy, in
3 some instances it's another entity like CVS
4 Indiana or CVS Rx Services.

5 Q. What is your understanding of why the
6 DEA requires distributors and dispensers of
7 controlled substances to have a DEA
8 registration?

9 MR. DELINSKY: Object to form.

10 A. I haven't really thought of it. It's
11 been a requirement under their regulations, but
12 you'd have to ask somebody at the DEA why they
13 regulate the way they regulate.

14 BY MR. ELSNER:

15 Q. Well, you're in charge of the whole
16 licensing department, everyone reports to you,
17 so I wanted to understand from you what you
18 believe the reason is that the DEA has a
19 registration requirement for distributing and
20 dispensing controlled substances.

21 MR. DELINSKY: Object to form.

22 A. Again, you'd have to ask somebody at
23 the DEA why they have regulations. I'm not
24 sure. I know that they need to -- we have

1 separate registrations for every facility so
2 they want the facilities that have controlled
3 substances to be registered in some way.

4 BY MR. ELSNER:

5 Q. Why?

6 A. So I don't know.

7 Q. Are you familiar with the Controlled
8 Substances Act?

9 A. Generally, yes.

10 Q. What is your understanding of the
11 Controlled Substances Act?

12 MR. DELINSKY: And, Mr. Moffatt, if
13 you can answer that question without it
14 disclosing attorney/client confidences you may
15 answer. If you can't, I instruct you not to
16 answer.

17 BY MR. ELSNER:

18 Q. Sir, you're a lawyer. You understand
19 attorney/client confidences and privileges?

20 MR. DELINSKY: Object to form.

21 A. Generally speaking, yes.

22 BY MR. ELSNER:

23 Q. So throughout this whole deposition,
24 I'm not trying to elicit a single response that

1 discloses any kind of attorney/client privilege,
2 so there's no need for a continued objection to
3 that. When I ask you a question, I want you to
4 assume that I'm not asking you to divulge any
5 attorney/client privilege. Do you understand
6 that?

7 A. I understand you saying that, but it's
8 difficult given my role -- my principal role
9 being an attorney and interacting with other
10 attorneys all day every day, it's hard to
11 separate, you know, what I know based on
12 discussions with the people that have expertise
13 in the Controlled Substances Act as opposed to
14 me. I'm a corporate lawyer, so general
15 corporate law I know.

16 Q. That's fine. What is your
17 understanding of the Controlled Substances Act?

18 MR. DELINSKY: Same objection and
19 instruction.

20 A. I don't have a specific understanding
21 of the Controlled Substances Act. I know it's a
22 law that's out there.

23 BY MR. ELSNER:

24 Q. Have you ever read it?

1 A. No, I have not read the act in its
2 entirety.

3 Q. Do you understand that controlled
4 substances are highly addictive?

5 MR. DELINSKY: Object to form.

6 A. I don't know. No, I don't know that
7 controlled substances are -- I think there are
8 other people at CVS that will respond -- that
9 are focused on that sort of thing.

10 BY MR. ELSNER:

11 Q. So as the president of CVS Indiana and
12 as the president of CVS Rx Services, you do not
13 know that controlled substances can be highly
14 addictive?

15 MR. DELINSKY: Object to form.

16 A. Others at CVS are responsible for
17 operations and so forth, and I have no view on
18 that.

19 BY MR. ELSNER:

20 Q. I'm not asking whether anybody else
21 knows they're highly addictive. I'm just asking
22 you, are controlled substances highly addictive?

23 MR. DELINSKY: Object to form.

24 BY MR. ELSNER:

1 Q. Yes, no, or I don't know.

2 A. Other people at CVS know. I don't
3 have an opinion on that.

4 Q. You don't know?

5 MR. DELINSKY: Object to form.

6 A. Other people at CVS know. I don't
7 have an opinion.

8 BY MR. ELSNER:

9 Q. You don't have an opinion one way or
10 the other?

11 MR. DELINSKY: Object to form. Asked
12 and answered.

13 A. Other people at CVS know about that.
14 It's not my role, and I don't have an opinion.

15 BY MR. ELSNER:

16 Q. Do you believe that there's a risk
17 that controlled substances like an opioid may be
18 diverted?

19 MR. DELINSKY: Object to form.

20 A. Other people at CVS are responsible
21 for operations and so forth. I don't have an
22 opinion on that.

23 BY MR. ELSNER:

24 Q. Has CVS ever distributed a Schedule II

1 drug, to your knowledge?

2 A. To my knowledge, no.

3 Q. Why not?

4 MR. DELINSKY: Same instruction with
5 regard to the attorney/client privilege, to the
6 extent that your knowledge is based on
7 attorney/client communications.

8 A. Other people at CVS made that
9 decision. You know, I've been there since '97.
10 The company has been around longer than that.
11 It was before I got there.

12 BY MR. ELSNER:

13 Q. So you don't know?

14 A. Other people at CVS would have been
15 responsible for that.

16 Q. Who?

17 A. I'm not sure.

18 Q. Are you sure someone is responsible
19 for that?

20 A. Other people at CVS are responsible
21 for all the operations, compliance, logistics.
22 We have huge departments that are responsible
23 for those things. I'm not responsible for those
24 things.

1 Q. CVS has distributed Schedule III drugs
2 to CVS pharmacies, is that right?

3 MR. DELINSKY: Object to form.

4 A. My understanding is that our
5 registrations are for Schedules III through V,
6 so yes.

7 BY MR. ELSNER:

8 Q. And CVS Indiana and CVS Rx Services
9 through the CVS Chemung distribution center
10 distributed Schedule III drugs, is that correct?

11 MR. DELINSKY: Object to form.

12 A. Other people at CVS were responsible
13 for the actual operations, but my understanding
14 is we had the registrations for Schedules III
15 through V, and that's what was distributed by
16 those distribution centers.

17 BY MR. ELSNER:

18 Q. And that they distributed those drugs
19 into Cuyahoga and Summit Counties, is that
20 right?

21 MR. DELINSKY: Object to form.

22 A. I don't have any specific knowledge of
23 where the distribution centers distributed.

24 BY MR. ELSNER:

1 Q. The Indiana distribution center for
2 CVS was distributing hydrocodone products until
3 hydrocodone was rescheduled as a Schedule II
4 drug in October of 2014, is that right?

5 MR. DELINSKY: Object to form. Same
6 objection as to attorney/client privilege.

7 A. Other people at CVS were responsible
8 for what was distributed where. I don't have
9 any knowledge of my own on that subject.

10 BY MR. ELSNER:

11 Q. So as the president of CVS Indiana,
12 you don't know whether CVS Indiana was
13 distributing hydrocodone products until they
14 were rescheduled?

15 MR. DELINSKY: Object to form.

16 A. Others at CVS were responsible for
17 that. I don't have any knowledge of my own.

18 BY MR. ELSNER:

19 Q. I've marked this document as the first
20 exhibit. This is Motley Rice 5.

21 (Whereupon, CVS-Moffatt-1 was marked
22 for identification.)

23 BY MR. ELSNER:

[illegible]

[illegible]

A horizontal bar chart with 20 rows. Each row has a small black square on the left, followed by a label, and then a horizontal bar. The bars represent percentages of respondents. The labels and their corresponding percentages are as follows:

Category	Percentage
1. Very high	100%
2. High	95%
3. Medium	98%
4. Low	85%
5. Very low	25%
6. Not at all	35%
7. Don't know	10%
8. No answer	98%
9. Other	15%
10. Very high	100%
11. High	85%
12. Medium	95%
13. Low	85%
14. Very low	95%
15. Not at all	15%
16. Don't know	10%
17. No answer	95%
18. Other	10%
19. Very high	100%
20. High	85%

A horizontal bar chart with 20 rows of data. Each row consists of a small square icon followed by a text label and a horizontal bar representing a percentage. The bars are black and set against a white background. The data is as follows:

Category	Percentage
1. Overall	95%
2. Overall	85%
3. Overall	90%
4. Overall	30%
5. Sub-category	95%
6. Overall	90%
7. Overall	55%
8. Sub-category	85%
9. Overall	70%
10. Sub-category	75%
11. Overall	95%
12. Overall	80%
13. Overall	30%
14. Sub-category	85%
15. Overall	80%
16. Overall	90%
17. Overall	90%
18. Overall	65%
19. Sub-category	85%
20. Overall	30%
21. Sub-category	90%
22. Overall	75%
23. Overall	90%

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[REDACTED]

19 MR. ELSNER: Mark this next document
20 as Moffatt Exhibit 2, this is MR 7.

21 (Whereupon, CVS-Moffatt-2 was marked
22 for identification.)

23 BY MR. ELSNER:

24 Q. Mr. Moffatt, this is another letter

1 from Mr. Joseph Rannazzisi which was sent to all
2 the distribution centers in the United States.
3 The date was December 27, 2007.

4 Have you ever seen this letter before
5 preparing for this deposition?

6 A. I don't recall if I've seen this
7 before. I didn't see it before preparing for
8 the deposition. I don't recall if I saw it in
9 connection with preparing.

10 Q. Let me just break that down.

11 Before your deposition prep with
12 counsel, had you ever seen this letter before?

13 A. I don't think so.

14 Q. Okay. The first line of the letter
15 says that "This letter is being sent to every
16 entity in the United States registered with the
17 Drug Enforcement" Agency "to manufacture or
18 distribute controlled substances."

19 Did I read that correctly?

20 A. It's Drug Enforcement Administration.
21 You said agency.

22 Q. I'm sorry.

23 A. But otherwise, yes.

24 Q. Okay. And as the head of licensing

1 for CVS, you do not recall ever receiving this
2 document before?

3 MR. DELINSKY: Object to form.

4 A. I've seen many, many documents. I
5 don't specifically recall seeing this one. It's
6 over ten years ago.

7 BY MR. ELSNER:

8 Q. This, in the second paragraph in the
9 second sentence, it cites a code section, and
10 then it says "specifically requires that a
11 registrant 'design and operate a system to
12 disclose to the registrant suspicious orders of
13 controlled substances.'"

14 Did CVS in Indiana have a system in
15 place as of December 27, 2007 to electronically
16 monitor for suspicious orders of controlled
17 substances?

18 MR. DELINSKY: Object to form.

19 A. Others at CVS would have been
20 responsible for such a system. I believe this
21 is the same code section as the previous
22 letter --

23 BY MR. ELSNER:

24 Q. That's right.

1 A. -- from the previous year.

2 Q. It's the Controlled Substances Act,
3 that's right.

4 Does it concern you that CVS didn't
5 have a system in place to electronically monitor
6 for suspicious orders of controlled substances
7 as of December 27, 2007?

8 MR. DELINSKY: Object to the form of
9 the question.

10 A. Others at CVS would have been
11 responsible for such a system.

12 BY MR. ELSNER:

13 Q. Do you understand that a violation of
14 the Controlled Substances Act could result in a
15 distribution center losing its license to
16 distribute controlled substances?

17 A. I'm generally aware of, you know, the
18 implications of violations, but I have no
19 specific knowledge. It's not my area of
20 expertise. I'm a corporate lawyer.

21 Q. But you understand that CVS and other
22 pharmacies from time to time have had their
23 licenses suspended, correct?

24 MR. DELINSKY: Object to the form of

1 the question.

2 Mr. Moffatt, further object on
3 privilege grounds. To the extent that you
4 possess any responsive information that you
5 obtained in the context of attorney/client
6 communications, I instruct you not to disclose
7 that information.

8 A. Information that it would have
9 received regarding other pharmacies or CVS would
10 have been through attorney communications.

11 BY MR. ELSNER:

12 Q. Well, you've signed settlements with
13 the DEA in which you entered a settlement with
14 them to avoid the suspension of your
15 registration for a pharmacy, correct?

16 MR. DELINSKY: Object to the form of
17 the question.

18 A. I have signed settlements for various
19 entities, other attorneys work on those
20 settlements and they come to me at the end when
21 they're ready to be signed. I don't know the
22 background as to why things were signed or
23 whether they were signed to avoid a suspension
24 or anything like that. I've signed documents,

1 but I don't know the full circumstances. You'd
2 have to give me the actual settlement that
3 you're talking about.

4 BY MR. ELSNER:

5 Q. Well, I'm just talking generally.

6 You understand the DEA has the
7 authority and the ability to suspend or remove a
8 license for a distributor to distribute a
9 controlled substance, you understand that,
10 right?

11 MR. DELINSKY: Object to form. Same
12 objection and same instruction as to privilege
13 in addition.

14 A. I'm aware based on attorney
15 communications.

16 BY MR. ELSNER:

17 Q. What was your understanding of why a
18 license was required at all to distribute
19 controlled substances?

20 MR. DELINSKY: Object to form. Same
21 objection and instruction to the extent the
22 question also implicates attorney/client
23 communications.

24 A. As we discussed earlier, the DEA set

1 up the regulatory regime. I don't have
2 information as to why it was set up the way it
3 was set up.

4 BY MR. ELSNER:

5 Q. So you were just signing paper and
6 moving paper, right? You don't understand what
7 the basis or need is for the license, why it's
8 required and what could result if you don't
9 fulfill your responsibilities?

10 MR. DELINSKY: Object to form. Same
11 objection and same instruction as to privilege
12 to the extent it pertains.

13 A. What I know about it is based on
14 attorney communications.

15 BY MR. ELSNER:

16 Q. I'm not talking about a specific
17 instance. I'm talking generally.

18 You're the head of the licensing
19 department, you oversee them, and you have no
20 understanding of what the purpose of the license
21 is for the controlled substance or what could
22 result if you don't fulfill the requirements of
23 the Controlled Substances Act, is that right?

24 MR. DELINSKY: Object to the form of

1 the question. Further object on privilege
2 grounds.

3 To the extent this calls for
4 attorney/client communications, I'd instruct you
5 not to answer, Mr. Moffatt.

6 And I'd just state for the record that
7 the attorney/client privilege applies to -- not
8 only to information exchanged in connection with
9 specific instances, but also to general
10 information exchanged for the purpose of
11 obtaining legal advice.

12 A. So other people at CVS are responsible
13 for operations and compliance, and they
14 understand the implications of, you know, the
15 need for licenses and for violations.

16 BY MR. ELSNER:

17 Q. I'm not asking you what anyone else
18 understands about the licensing requirements.
19 I'm just asking you, because you're the head of
20 the licensing department, you oversee it, and
21 you have no understanding of the reason for the
22 license or the consequences of not fulfilling
23 your obligations under the controlled substances
24 and its implications for your ability to lose

1 the license, is that right?

2 MR. DELINSKY: Object to form. Same
3 objection as to privilege. Same instruction as
4 to privilege.

5 A. That's not right. I have information,
6 but all my information would have been received
7 in the context of attorney information being
8 passed to me from other areas of the legal
9 department.

10 BY MR. ELSNER:

11 Q. That simply can't be true. I'm not
12 asking you about a particular instance or
13 investigation. I'm asking you generally as the
14 head of the licensing department, do you have an
15 understanding of what the licensing requirements
16 were for distributing controlled substances?

17 MR. DELINSKY: Object to the form of
18 the question.

19 I instruct the witness not to answer
20 based on his prior two answers.

21 A. Again, my information was based on
22 information I received from other attorneys.

23 BY MR. ELSNER:

24 Q. The next sentence in that same

1 paragraph reads "The regulation clearly
2 indicates that it is the sole responsibility of
3 the registrant to design and operate such a
4 system."

5 Did you understand that it was the
6 sole responsibility for CVS Indiana to design
7 and operate a system to prevent diversion of
8 controlled substances?

9 MR. DELINSKY: Object to the form of
10 the question.

11 Same objection, same instruction,
12 Mr. Moffatt.

13 A. You read the sentence as it's written
14 here. I have no basis to agree or disagree with
15 the conclusion that it clearly indicates -- what
16 it says it indicates.

17 BY MR. ELSNER:

18 Q. Did you know that as the president of
19 CVS Indiana that it was CVS Indiana's sole
20 responsibility to design such a system?

21 MR. DELINSKY: Object to form. Asked
22 and answered.

23 A. As I said, that's what the sentence
24 says, but I don't have any basis to agree or

1 disagree that it's its sole responsibility.

2 BY MR. ELSNER:

3 Q. And you never saw this in 2007?

4 MR. DELINSKY: Object to form. Asked
5 and answered.

6 A. I don't recall seeing it. I see many,
7 many documents.

8 BY MR. ELSNER:

9 Q. Do you believe there's an opioid
10 crisis in the United States?

11 MR. DELINSKY: Object to form.

12 A. I don't have any basis to characterize
13 anything as a crisis. I'm a corporate lawyer.

14 BY MR. ELSNER:

15 Q. What's your understanding?

16 MR. DELINSKY: Object to form.

17 Further object to the extent that that question
18 calls for the disclosure of attorney/client
19 privilege information.

20 A. I don't have any personal information.
21 I've gathered information on -- you know, based
22 on my services as an attorney for the company.

23 BY MR. ELSNER:

24 Q. So you have no understanding at all

1 whether there's an opioid crisis or not in the
2 United States?

3 MR. DELINSKY: Object to the form of
4 the question. Asked and answered.

5 A. The information that I've received
6 would have been in the context of being a
7 corporate attorney.

8 BY MR. ELSNER:

9 Q. So I want to drill down on this a
10 little bit.

11 If someone told you that there was an
12 opioid crisis in the United States, and you're
13 an employee of CVS, you would consider that a
14 privileged communication?

15 A. It would depend on the context. I
16 don't think anybody would come out of the blue
17 and just walk up to me and say that.

18 Q. So you've never heard -- have you ever
19 heard that there's an opioid crisis in the
20 United States?

21 MR. DELINSKY: Object to the form.
22 Asked and answered. I instruct the witness not
23 to answer further.

24 BY MR. ELSNER:

1 Q. Are you going to answer the question?

2 A. I was instructed not to answer. No.

3 MR. DELINSKY: I'd just like to make
4 clear for the record the objection is on -- the
5 instruction was based on privilege.

6 BY MR. ELSNER:

7 Q. I'm going to show you Motley Rice 4.

8 MR. DELINSKY: Before you show the
9 witness the exhibit, let's break. I think we've
10 been going about an hour.

11 MR. ELSNER: Okay. Happy to.

12 THE VIDEOGRAPHER: We're going off the
13 record at 9:05 a.m.

14 (Whereupon, a recess was taken.)

15 THE VIDEOGRAPHER: We're back on the
16 record at 9:18 a.m.

17 BY MR. ELSNER:

18 Q. Mr. Moffatt, have you read any
19 newspaper articles, magazine articles about the
20 opioid crisis in the United States?

21 A. I'm sure I have. I don't recall any
22 specifics.

23 Q. What generally do you recall?

24 MR. DELINSKY: Object to form.

1 A. Just general news stories.

2 BY MR. ELSNER:

3 Q. What sources of news?

4 MR. DELINSKY: Object to form.

5 A. So like 60 Minutes, that sort of
6 thing.

7 BY MR. ELSNER:

8 Q. Have you watched the 60 Minutes
9 episodes?

10 A. No, I have not.

11 Q. Have you read newspaper articles about
12 the 60 minutes episodes?

13 MR. DELINSKY: Object to form.

14 BY MR. ELSNER:

15 Q. Dealing with the opioid crisis?

16 MR. DELINSKY: Object to form.

17 A. Not that I recall, no.

18 BY MR. ELSNER:

19 Q. Do you get a newspaper at your house?

20 A. No, I don't.

21 Q. Do you get a newspaper at work?

22 A. No, I don't.

23 Q. Do you watch the news in the evening?

24 A. No, I don't.

1 Q. Have you read any books about the
2 opioid crisis in the United States?

3 A. No.

4 Q. Not a single one?

5 MR. DELINSKY: Object to form.

6 A. Not that I recall, no. I don't read
7 many books. I'm, you know, at work most of the
8 time.

9 BY MR. ELSNER:

10 Q. Have you read any congressional
11 testimony about the opioid crisis in the States?

12 MR. DELINSKY: Object to form.

13 Further object on privilege grounds to the
14 extent that --

15 MR. ELSNER: It can't be privilege
16 whether he read congressional testimony. It
17 just can't be privileged if he read
18 congressional testimony.

19 MR. DELINSKY: Mr. Elsner, you're not
20 the arbiter of what privilege is or isn't, so if
21 I could finish my objection. It very well could
22 be.

23 To the extent that you reviewed
24 testimony in the context of attorney/client

1 work, I instruct you to confer with me privately
2 about that before answering.

3 MR. ELSNER: I think that's an
4 improper instruction.

5 BY MR. ELSNER:

6 Q. Sir, have you read any congressional
7 testimony about the opioid crisis?

8 A. If I have, it would have been in the
9 context of attorney/client communications.

10 Q. Well, you can answer yes or no, and
11 then we can go to the next part.

12 Have you read such testimony?

13 A. I don't recall reading such testimony,
14 but if I have, it would have been in the context
15 of attorney/client communication.

16 Q. Okay. So if I understand it, you've
17 read no books, don't recall any newspaper
18 articles, have watched no news programs at all
19 about the opioid crisis in the United States?

20 MR. DELINSKY: Object to form.

21 A. I've seen information, but it would
22 largely be in connection with my role as a
23 corporate attorney.

24 BY MR. ELSNER:

1 Q. Have you attended any CLE programs
2 related to the DEA regulations?

3 A. I have attended CLE programs. I don't
4 recall specific topics.

5 Q. Have you -- are they in the field of
6 DEA regulations?

7 MR. DELINSKY: Object to form. Asked
8 and answered.

9 A. I have attended many over the years.
10 We have a CLE requirement for Rhode Island, but
11 I don't recall specific topics and specific
12 years that I would have.

13 BY MR. ELSNER:

14 Q. You don't -- do you select CLE
15 programs in your field of practice?

16 A. Typically they're in my field of
17 practice, but there are also CLE presentations
18 at work, there are ones that are online, so it
19 varies.

20 Q. Tell me about the ones that CVS shows
21 at work. What type of CLE programs does CVS
22 have internally?

23 MR. DELINSKY: Object to form.

24 A. They have a wide variety of programs.

1 Law firms come in and present on various topics.

2 BY MR. ELSNER:

3 Q. What law firms?

4 A. A wide variety of law firms.

5 Q. Give me some names.

6 A. I don't -- I'm not involved in setting
7 them up. There are others in the department
8 that set up the programs and say, there's a CLE
9 on attorney/client privilege, or something like
10 that, and whatever firm they set it up with.
11 But, yeah, it varies.

12 Q. Has there been a CLE on the
13 distribution or dispensing of opioids?

14 A. I don't recall.

15 Q. Has there been a CLE on the dispensing
16 or distribution of controlled substances?

17 A. Are you talking about at CVS or --

18 Q. At CVS.

19 A. I don't recall.

20 Q. Who at CVS would set those up?

21 A. One of the other attorneys has an
22 administrative assistant that -- or a paralegal
23 that works with the firms to set up programs.

24 Q. Who is the attorney that selects what

1 CLE programs will be shown at CVS?

2 MR. DELINSKY: Object to form.

3 A. It varies. Different attorneys would
4 set them up.

5 BY MR. ELSNER:

6 Q. Well, give me a couple names.

7 MR. DELINSKY: Object to form.

8 A. Typically it's -- it would be one of
9 the senior vice presidents in the legal
10 department, so Betsy Ferguson or Colleen
11 McIntosh would be two of the attorneys that
12 might have -- you know, firms would come to them
13 and say, we have a program on attorney/client
14 privilege, do you want us to do it at CVS.

15 BY MR. ELSNER:

16 Q. Have you attended any DEA
17 presentations?

18 MR. DELINSKY: Object to form.

19 A. Others at CVS have. I have not
20 personally.

21 BY MR. ELSNER:

22 Q. Have you ever seen any slides or
23 PowerPoint presentations prepared by the DEA?

24 A. Other than in the context of

1 attorney/client information that I would have
2 received, no.

3 Q. Well, let's break it down.

4 Have you ever seen such DEA
5 presentations? Just yes or no.

6 A. I don't recall seeing any DEA
7 presentations.

8 Q. Have you ever spoke with Joseph
9 Rannazzisi?

10 A. Not that I know of, no.

11 Q. Have you spoken with anyone at the DEA
12 about any of its investigations of CVS?

13 MR. DELINSKY: Object to form.

14 A. I've spoken to people at the DEA. I
15 don't believe I've ever spoken to them in the
16 context of an investigation.

17 BY MR. ELSNER:

18 Q. In what context?

19 A. Related to registrations.

20 Q. Registrations of what?

21 A. Either pharmacies or distribution
22 centers, in the context of acquisitions where
23 we're acquiring a large number of stores or
24 distribution centers and how we go about making

1 the transition from the prior owner to CVS,
2 that's typically where I would interact with
3 people at the DEA.

4 Q. Who specifically, or what division of
5 the DEA would you interact with?

6 A. It would vary, but I believe they're
7 typically in the Office of Diversion Control.

8 Q. Do you know who?

9 A. It would have varied over the years.
10 I've been doing it for 21 years, so different
11 people at different times. I don't recall
12 anybody's name.

13 Q. What about in the 2010 through 2012
14 period?

15 MR. DELINSKY: Objection. Asked and
16 answered.

17 A. Well, we did acquisitions in that time
18 period, so I probably would have talked to them
19 sometime in that time period.

20 BY MR. ELSNER:

21 Q. Do you know any names?

22 A. I don't recall. It's a long time ago.

23 Q. I'm going to mark this next letter as
24 Exhibit 3.

1 (Whereupon, CVS-Moffatt-3 was marked
2 for identification.)

3 BY MR. ELSNER:

4 Q. This is a letter from counsel to
5 plaintiffs in this litigation, and it's a list
6 of CVS custodians, and it says in the second
7 sentence that this "list identifies individuals
8 who we believe, based on our good-faith
9 investigation to date, are most likely to have
10 non-cumulative discoverable information relating
11 to the claims against the CVS defendants in the
12 Track One cases."

13 Do you see that?

14 A. Yes.

15 Q. Okay. And if you turn to the second
16 page under the fifteenth person, your name
17 appears there.

18 Do you see that?

19 A. Yes.

20 Q. What is your understanding of the
21 discoverable information that you have to offer
22 in this litigation?

23 MR. DELINSKY: Object to form.

24 And I'd state on the record that you

1 left out the first sentence of the letter which
2 indicates that the list includes individuals
3 proposed by plaintiffs, and Mr. Moffatt's name
4 was proposed by the plaintiffs.

5 MR. ELSNER: Okay.

6 MR. DELINSKY: He was not identified
7 as a custodian by defense counsel who would have
8 relevant information.

9 MR. ELSNER: Okay.

10 BY MR. ELSNER:

11 Q. Do you have relevant information
12 concerning the claims and defenses in this
13 action?

14 MR. DELINSKY: Object to form.

15 And to the extent that calls on you to
16 provide attorney/client legal analysis, I
17 instruct you not to answer.

18 A. I wouldn't be the one making that
19 decision.

20 BY MR. ELSNER:

21 Q. Would you agree that CVS is among the
22 largest of the chain pharmacies in the United
23 States?

24 MR. DELINSKY: Object to form.

1 A. Yes, we are.

2 BY MR. ELSNER:

3 Q. And you're the largest by store number
4 with more than 9,800 CVS pharmacies?

5 MR. DELINSKY: Object to form.

6 A. We're close to Walgreen's, so I'm not
7 exactly sure what Walgreen's store count is
8 these days. We are among the largest.

9 BY MR. ELSNER:

10 Q. Among the top two?

11 MR. DELINSKY: Object to form.

12 A. As far as I know, yes.

13 BY MR. ELSNER:

14 Q. Do you know how many pharmacies CVS
15 currently operates today in the United States?

16 MR. DELINSKY: Object to form.

17 A. Approximately 9,900.

18 BY MR. ELSNER:

19 Q. And you're also the largest by the
20 number of pharmacists, right? There are over
21 20,000 pharmacists for CVS?

22 MR. DELINSKY: Object to form.

23 A. I'm not familiar with the count of
24 pharmacists at, say, Walgreen's.

1 MR. ELSNER: I'll mark this next
2 document as Exhibit 4.

3 (Whereupon, CVS-Moffatt-4 was marked
4 for identification.)

5 BY MR. ELSNER:

6 Q. This is Motley Rice 206. This is from
7 CVS's website.

8 Would you agree with me that CVS is
9 one of the largest pharmacists by prescriptions,
10 handling over 2.5 billion prescriptions, is that
11 right?

12 MR. DELINSKY: Object to form.

13 A. So it says here "2.5 billion
14 prescriptions managed or filled." That doesn't
15 mean we filled them necessarily. But I know
16 that we are one of the bigger pharmacies and,
17 therefore, fill more prescriptions than most
18 other pharmacies.

19 BY MR. ELSNER:

20 Q. And would you agree that CVS is one of
21 the largest pharmacies by revenue?

22 MR. DELINSKY: Object to form.

23 A. To my knowledge, yes.

24 BY MR. ELSNER:

1 Q. And would it be accurate to say that
2 that revenue is close to \$60 billion in 2017?

3 MR. DELINSKY: Object to form.

4 A. I don't have the figures at hand, but
5 -- so I don't really know off the top of my
6 head. There are many people that work on the
7 financials for the company.

8 BY MR. ELSNER:

9 Q. Does that sound about right?

10 A. I really couldn't say.

11 (Whereupon, CVS-Moffatt-5 was marked
12 for identification.)

13 BY MR. ELSNER:

14 Q. Are we on Exhibit 5?

15 A. Yes.

16 Q. This is a map of the 9,800 pharmacies
17 that CVS has in the United States. Does it
18 appear accurate in terms of the majority of your
19 pharmacies on the East Coast, the midwest, and
20 in California?

21 MR. DELINSKY: Object to form.

22 A. So I'm not familiar with Red Lion,
23 where this came from, but it appears generally
24 accurate. I mean, I don't know that you'd call

1 Texas midwest, there's a number of stores in
2 Texas, Arizona, so this looks generally like the
3 store map picture.

4 BY MR. ELSNER:

5 Q. And by midwest, I was referring to
6 sort of the Ohio area. And CVS has about 329
7 pharmacies in Ohio, is that right?

8 MR. DELINSKY: Object to form.

9 A. I don't recall the specifics of state
10 by state store count, but that sounds generally
11 accurate.

12 BY MR. ELSNER:

13 Q. If you look back at Exhibit 4 on the
14 third page, it has a drop-down on the website,
15 facts by state, and for Ohio the drop-down says
16 329 pharmacies. Does that sound about accurate?

17 MR. DELINSKY: Object to form.

18 A. I don't know when this was prepared,
19 so, you know, it could have changed a little
20 bit. But, you know, at the time that the
21 information was loaded it was accurate, but, you
22 know, we opened new stores, we closed stores.

23 BY MR. ELSNER:

24 Q. Sure.

1 A. Pretty consistently.

2 Q. It's generally accurate?

3 A. Yes.

4 Q. And what is CVS's market share in the
5 country?

6 MR. DELINSKY: Object to form.

7 Mr. Moffatt, to the extent that that
8 calls for information you've obtained in
9 attorney/client context, I instruct you not to
10 answer.

11 A. Well, it would depend on what product
12 you're talking about and so forth. There are
13 other people at CVS that would be more attuned
14 to what market share we have.

15 BY MR. ELSNER:

16 Q. I'm just describing the number of
17 pharmacies across the country. Would you say
18 that you have about 14 percent of the total
19 market share?

20 MR. DELINSKY: Object to form. Same
21 objection and instruction as to privilege.

22 A. I don't know what the market share is.
23 And again, it depends on what you're looking at,
24 whose statistics you're looking at. Others at

1 CVS, you know, have responsibility -- well, they
2 would know more about market share than a
3 corporate attorney.

4 BY MR. ELSNER:

5 Q. What about in Ohio, do you know what
6 the market share is that CVS has in Ohio?

7 A. Others at CVS would know that
8 information. I don't.

9 Q. There are roughly 70 CVS stores in
10 Summit County and Cuyahoga County. Does that
11 sound accurate to you?

12 A. I have no basis for knowing how many
13 stores are in specific counties.

14 Q. Are you aware that the Summit and
15 Cuyahoga Counties are -- sorry, strike that.

16 Are you aware that CVS stores in
17 Summit and Cuyahoga County were provided
18 controlled substances from the Indiana
19 distribution center?

20 MR. DELINSKY: Object to form.

21 A. Others at CVS would be responsible for
22 which distribution centers distribute to which
23 stores. I'm not responsible for that, and I
24 don't have any information of my own.

1 BY MR. ELSNER:

2 Q. So as the president of CVS Indiana,
3 you don't know what states that distribution
4 center distributes controlled substances to, is
5 that right?

6 MR. DELINSKY: Object to form.

7 A. Others at CVS would be responsible for
8 that information. It's -- in connection with my
9 licensing responsibility, I know that it has
10 licenses in a number of states.

11 BY MR. ELSNER:

12 Q. Have you read the complaint in this
13 case?

14 MR. DELINSKY: Object to form.

15 A. In connection with preparing for this,
16 I probably was given it at some point. I don't
17 recall seeing it.

18 BY MR. ELSNER:

19 Q. Well, did you read it?

20 MR. DELINSKY: Object to form. Asked
21 and answered.

22 A. Again, in connection with preparing --
23 either preparing for the case, or I think I
24 might have provided a declaration or an

1 affidavit, so I may have read it back then, but
2 I don't recall specifics about the complaint.

3 BY MR. ELSNER:

4 Q. But you did provide a declaration. In
5 preparing the declaration, did you read the
6 complaint?

7 MR. DELINSKY: Object to form. Asked
8 and answered.

9 A. I believe it would have been given to
10 me by counsel. I don't recall. I signed a
11 number of declarations, but typically I would be
12 given the documents that I need in order to
13 provide the declaration.

14 BY MR. ELSNER:

15 Q. Did you write the declaration?

16 MR. DELINSKY: Object to form.

17 To the extent that calls for the
18 disclosure of attorney/client communications, I
19 instruct you not to answer.

20 A. It would have been purely
21 attorney/client communications.

22 BY MR. ELSNER:

23 Q. What did you read to prepare your
24 declaration? Did you read the declaration?

1 A. Of course, I read the declaration.

2 Q. What else did you read?

3 A. I don't recall specifics. I'd have to
4 see the declaration and then, you know, it
5 would -- I'm not sure that I recall exactly what
6 I read.

7 Q. Do you understand that the allegations
8 in this case is that there is an opioid crisis
9 in Summit and Cuyahoga Counties?

10 MR. DELINSKY: Object to form.

11 A. I don't have any basis for that
12 understanding.

13 BY MR. ELSNER:

14 Q. To prepare for the deposition, did you
15 read any -- to prepare for the deposition, did
16 you read any other depositions that have been
17 taken in this case?

18 A. I did not.

19 Q. Did you read that, not just CVS
20 depositions, any other depositions from Purdue,
21 Cardinal, any other depositions?

22 A. I don't recall reading any other
23 depositions in this case.

24 Q. Have you been provided any?

1 A. I don't believe so, no.

2 Q. What did you do to prepare for your
3 deposition?

4 A. Principally I met with our attorneys
5 and --

6 Q. For how long?

7 A. -- both in-house counsel and out.

8 Q. For how long did you meet, and over
9 how many days?

10 A. I don't really recall. We met a
11 couple of different times because my deposition
12 was originally scheduled earlier, so -- and I
13 don't recall, I didn't keep track of how long
14 meetings were or anything like that.

15 Q. Did you review documents?

16 A. I reviewed a handful of documents,
17 yes.

18 Q. What documents did you review?

19 MR. DELINSKY: I instruct you not to
20 answer that, and caution you to the extent you
21 even recall an attorney/client --
22 attorney/client privilege and attorney work
23 product grounds.

24 Mr. Elsner, if you would like to ask

1 about particular documents, we'll take those
2 questions as they come. But to the extent your
3 question asks for a selection of documents
4 that's selected by counsel, I instruct the
5 witness not to answer.

6 MR. ELSNER: I don't think that's an
7 appropriate objection, but I think it's one we
8 need to resolve with the court.

9 BY MR. ELSNER:

10 Q. Did you discuss your deposition with
11 anyone other than counsel?

12 A. No.

13 Q. Did you discuss your deposition with
14 any other employees at CVS other than attorneys?

15 A. Other than attorneys, no. I let my
16 boss know that I was going to be here today.

17 Q. What role, if any, did you play with
18 respect to the suspicious order monitoring
19 system at CVS?

20 MR. DELINSKY: Object to form.

21 A. Others at CVS were responsible for the
22 systems. I didn't have any role in that. I'm
23 an attorney.

24 BY MR. ELSNER:

1 Q. At one point in time CVS had hired the
2 Buzzeo Group to help it develop an algorithm for
3 suspicious order monitoring system. Are you
4 familiar with the Buzzeo Group?

5 A. I am familiar with Ron Buzzeo. Many,
6 many years ago I communicated with him, but it's
7 been quite a long time since I did any of that.

8 Q. What was the base -- what were you
9 communicating with him about?

10 MR. DELINSKY: And I object to the
11 extent that question calls for privileged
12 information. To the extent it does, I instruct
13 the witness not to answer. If you're not sure
14 and you want to discuss it, we can discuss it.

15 A. I don't recall specifically what I
16 might have talked to him about, but it would
17 have been because I'm an attorney and he was a
18 consultant.

19 BY MR. ELSNER:

20 Q. Did you negotiate the contract between
21 CVS and the Buzzeo Group?

22 MR. DELINSKY: Object to form.

23 A. I don't recall any -- I don't even
24 know if there was a contract. I don't recall if

1 I was involved in the negotiation of it.

2 BY MR. ELSNER:

3 Q. Did it relate to the development of a
4 suspicious order monitoring system at CVS, your
5 conversations with Ron Buzzeo?

6 MR. DELINSKY: Object to form.

7 A. I don't recall what I would have
8 talked to Mr. Buzzeo about.

■ [REDACTED]

■ ■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

1 BY MR. ELSNER:

2 Q. You said you knew Ron Buzzeo, I may
3 misquote you, it's not my intention, but from
4 way back. What period of time did you first
5 meet Ron Buzzeo?

6 MR. DELINSKY: Object to form.

7 A. It would have been sometime shortly
8 after I got to CVS, so late 1990s, early 2000s.

9 BY MR. ELSNER:

10 Q. And was your meeting with him in
11 relationship to him serving as a consultant to
12 CVS?

13 MR. DELINSKY: Object to form.

14 A. As I recall, yes. And I don't know
15 that I ever met him, I think I talked to him on
16 the phone.

17 BY MR. ELSNER:

18 Q. Okay. And what's your best
19 recollection of that discussion? And how many
20 times did you talk to him on the phone?

21 MR. DELINSKY: Object to form.

22 A. It was 20 years ago. I really don't
23 know.

24 BY MR. ELSNER:

[illegible]

23 BY MR. ELSNER:

24 Q. Were you aware as the president of CVS

1 in Indiana that CVS Indiana was reviewing all
2 orders for controlled substances to determine
3 whether there was a suspicion of diversion?

4 MR. DELINSKY: Object to form.

5 A. Others at CVS were responsible for
6 operations, and I was not involved in that.

7 BY MR. ELSNER:

8 Q. So as the president of CVS Indiana, no
9 operational issues were brought to your
10 attention, is that right?

11 MR. DELINSKY: Object to the form of
12 the question.

13 A. Others at CVS were responsible for
14 operations. I was not involved in operations.
15 I'm not an operator.

16 BY MR. ELSNER:

17 Q. Did you have any conversations with
18 Mark Nicastro who was an employee of CVS
19 Indiana?

20 A. Not that I recall, no.

21 Q. Do you recall any conversations with
22 any employees of CVS Indiana distribution center
23 while you served as president of CVS Indiana?

24 MR. DELINSKY: Object to form.

1 A. Any communications I would have had
2 would have been in my role as an attorney. I
3 don't recall specifics.

4 BY MR. ELSNER:

5 Q. Let's break it down.

6 Do you recall any conversations? And
7 we can deal with the privilege issue separately.

8 A. I believe I have talked to people at
9 the distribution center in my role as an
10 attorney.

11 Q. What people -- without disclosing the
12 conversation, what people at the CVS Indiana
13 distribution center did you communicate with?

14 A. I don't recall. It was many years ago
15 that we're talking about. We're talking about,
16 you know, pre-2014, so I don't really know.

17 Q. Did you ever speak with Gary Millikan?

18 A. I don't recall. I know the name, and
19 I probably have talked to Gary in the past,
20 either on conference calls or directly, I can't
21 recall. But it would have been, again, in my
22 role as an attorney.

23 Q. Aaron Burtner, did you ever have any
24 conversations with Aaron Burtner?

1 A. I'm not familiar with that name.

2 MR. ELSNER: Mark this as Exhibit 6.

3 (Whereupon, CVS-Moffatt-6 was marked
4 for identification.)

5 BY MR. ELSNER:

6 Q. Mr. Moffatt, this is the DEA's Drug
7 Fact Sheet for hydrocodone. Hydrocodone was one
8 of the drugs that the Indiana distribution
9 center distributed to CVS stores in Summit and
10 Cuyahoga County.

11 Are you familiar with the fact that
12 CVS distributed hydrocodone?

13 MR. DELINSKY: Object to form.

14 A. Others were responsible for what
15 distribution centers distributed what drugs, and
16 I'm not familiar with it.

17 BY MR. ELSNER:

18 Q. Okay. This says, if you read it in
19 the Overview with me here, that "Hydrocodone is
20 the most frequently prescribed opioid in the
21 United States and is associated with more drug
22 abuse and diversion than any other...illicit
23 opioid."

24 Were you aware of that?

1 MR. DELINSKY: Object to form.

2 A. Well, it says "licit or illicit."

3 BY MR. ELSNER:

4 Q. Licit or illicit, that's right.

5 A. I'm not familiar with this document at
6 all, so I was not familiar until reading it just
7 now.

8 Q. Are you aware that hydrocodone is the
9 most frequently prescribed opioid in the United
10 States?

11 A. That's what it says here. I'm not
12 familiar with what drugs are prescribed. Others
13 at CVS would be more knowledgeable about that.

14 Q. Did you know in certain years the
15 dispensing of hydrocodone was more than double
16 that of Lipitor in the United States?

17 MR. DELINSKY: Object to form.

18 A. Others at CVS are knowledgeable about
19 the prescribing of drugs. That's not in my
20 area.

21 BY MR. ELSNER:

22 Q. As the president of CVS Indiana, do
23 you know whether hydrocodone was the highest
24 drug distributed from CVS Indiana?

1 MR. DELINSKY: Object to form.

2 A. Others at CVS would know about what
3 drugs were distributed from what distribution
4 centers. It's not in my area.

5 BY MR. ELSNER:

6 Q. Were you aware that hydrocodone was
7 the subject of more drug abuse and diversion
8 than any other licit or illicit opioid?

9 MR. DELINSKY: Object to form.

10 A. Others at CVS were responsible for
11 that sort of thing. It's not in my area.

12 BY MR. ELSNER:

13 Q. Did it concern you as the president of
14 CVS Indiana that you were distributing
15 hydrocodone and that it was the subject of such
16 abuse?

17 MR. DELINSKY: Object to form.

18 A. Others at CVS were responsible for
19 this, and I don't have any basis for what you're
20 saying in your question.

21 BY MR. ELSNER:

22 Q. So it didn't concern you one way or
23 the other?

24 MR. DELINSKY: Object to form.

1 A. Others at CVS would be responsible for
2 those areas.

3 BY MR. ELSNER:

4 Q. And it didn't concern you?

5 MR. DELINSKY: Object to form.

6 A. Others at CVS were responsible for
7 that.

8 BY MR. ELSNER:

9 Q. Well, they may have been, but did it
10 concern you?

11 MR. DELINSKY: Object to form.

12 A. Others at CVS were responsible, so I
13 was not involved in that, and so it was not --
14 it would not have been one of my concerns.

15 MR. ELSNER: I'm going to mark this
16 next document as Exhibit 7.

17 (Whereupon, CVS-Moffatt-7 was marked
18 for identification.)

19 BY MR. ELSNER:

■ ■ ██
■ ██
■ ██
■ ██
■ ██

Category	Percentage
1. Very satisfied	65%
2. Satisfied	30%
3. Dissatisfied	5%
4. Very dissatisfied	0%
5. Don't know	0%
6. Very satisfied	85%
7. Satisfied	10%
8. Dissatisfied	3%
9. Very dissatisfied	0%
10. Don't know	0%
11. Very satisfied	75%
12. Satisfied	15%
13. Dissatisfied	5%
14. Very dissatisfied	0%
15. Don't know	0%
16. Very satisfied	90%
17. Satisfied	5%
18. Dissatisfied	2%
19. Very dissatisfied	0%
20. Don't know	0%
21. Very satisfied	80%
22. Satisfied	10%
23. Dissatisfied	5%
24. Very dissatisfied	0%
25. Don't know	0%
26. Very satisfied	70%
27. Satisfied	15%
28. Dissatisfied	5%
29. Very dissatisfied	0%
30. Don't know	0%
31. Very satisfied	85%
32. Satisfied	10%
33. Dissatisfied	3%
34. Very dissatisfied	0%
35. Don't know	0%
36. Very satisfied	75%
37. Satisfied	15%
38. Dissatisfied	5%
39. Very dissatisfied	0%
40. Don't know	0%
41. Very satisfied	90%
42. Satisfied	5%
43. Dissatisfied	2%
44. Very dissatisfied	0%
45. Don't know	0%
46. Very satisfied	80%
47. Satisfied	10%
48. Dissatisfied	5%
49. Very dissatisfied	0%
50. Don't know	0%
51. Very satisfied	70%
52. Satisfied	15%
53. Dissatisfied	5%
54. Very dissatisfied	0%
55. Don't know	0%
56. Very satisfied	85%
57. Satisfied	10%
58. Dissatisfied	3%
59. Very dissatisfied	0%
60. Don't know	0%
61. Very satisfied	75%
62. Satisfied	15%
63. Dissatisfied	5%
64. Very dissatisfied	0%
65. Don't know	0%
66. Very satisfied	90%
67. Satisfied	5%
68. Dissatisfied	2%
69. Very dissatisfied	0%
70. Don't know	0%
71. Very satisfied	80%
72. Satisfied	10%
73. Dissatisfied	5%
74. Very dissatisfied	0%
75. Don't know	0%
76. Very satisfied	70%
77. Satisfied	15%
78. Dissatisfied	5%
79. Very dissatisfied	0%
80. Don't know	0%
81. Very satisfied	85%
82. Satisfied	10%
83. Dissatisfied	3%
84. Very dissatisfied	0%
85. Don't know	0%
86. Very satisfied	75%
87. Satisfied	15%
88. Dissatisfied	5%
89. Very dissatisfied	0%
90. Don't know	0%
91. Very satisfied	90%
92. Satisfied	5%
93. Dissatisfied	2%
94. Very dissatisfied	0%
95. Don't know	0%
96. Very satisfied	80%
97. Satisfied	10%
98. Dissatisfied	5%
99. Very dissatisfied	0%
100. Don't know	0%

A horizontal bar chart titled "U.S. should take action to address climate change" showing the percentage of respondents who believe the U.S. should take action to address climate change. The chart is broken down by age group (18-29, 30-49, 50-69, 70+) and gender (Male, Female). The y-axis lists the demographic groups, and the x-axis shows the percentage from 0 to 100. The bars are colored blue for Male and pink for Female. The data is as follows:

Age Group	Gender	Percentage
18-29	Male	92%
	Female	95%
30-49	Male	88%
	Female	90%
50-69	Male	85%
	Female	87%
70+	Male	78%
	Female	80%

Category	Percentage
1. Very high	85%
2. High	80%
3. Medium	85%
4. Low	85%
5. Very low	55%
6. Not at all	35%
7. Don't know	55%
8. No answer	85%
9. No opinion	85%
10. No response	85%
11. No comment	85%
12. No information	85%
13. No data	85%
14. No results	85%
15. No findings	85%
16. No conclusions	85%
17. No recommendations	85%
18. No suggestions	85%
19. No advice	85%
20. No help	85%
21. No support	85%
22. No assistance	85%
23. No aid	85%
24. No relief	85%
25. No comfort	85%
26. No solace	85%
27. No consolation	85%
28. No sympathy	85%
29. No empathy	85%
30. No understanding	85%
31. No compassion	85%
32. No mercy	85%
33. No leniency	85%
34. No clemency	85%
35. No pardon	85%
36. No forgiveness	85%
37. No amnesty	85%
38. No immunity	85%
39. No exemption	85%
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12 MR. ELSNER: Why don't we take a quick
13 break. Go off the record for a minute.

14 THE VIDEOGRAPHER: We're going off the
15 record at 9:58 a.m.

16 (Whereupon, a recess was taken.)

17 THE VIDEOGRAPHER: We're back on the
18 record at 10:10 a.m.

19 BY MR. ELSNER:

20 Q. Mr. Moffatt, I'm going to show you
21 Exhibit 8.

22 (Whereupon, CVS-Moffatt-8 was marked
23 for identification.)

24 BY MR. ELSNER:

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7 BY MR. ELSNER:

8 Q. What did you do as the president of
9 CVS Indiana?

10 MR. DELINSKY: Object to form. Asked
11 and answered.

12 A. My role was largely administrative.

13 BY MR. ELSNER:

14 Q. And to do what?

15 A. Sign documents.

16 Q. What documents?

17 MR. DELINSKY: Objection. Asked and
18 answered.

19 A. I signed many, many documents for a
20 number of our entities. I don't recall
21 specifics as to what I signed for a specific
22 entity.

23 BY MR. ELSNER:

24 Q. Well, you knew you were being deposed

1 today, and you knew you were being deposed with
2 your role with respect to being the president of
3 CVS Indiana which is a defendant in this action,
4 right?

5 A. Yes.

6 Q. Did you take any steps to look through
7 the documents or the things you executed as the
8 president of CVS Indiana in the relevant time
9 period to prepare for today's deposition?

10 MR. DELINSKY: Object to form.

11 A. I don't know what documents I signed
12 on behalf of CVS Indiana.

13 BY MR. ELSNER:

14 Q. And to come here today for your
15 deposition you didn't make any effort to
16 determine that, is that right?

17 MR. DELINSKY: Object to form.

18 A. I wasn't involved in the collection of
19 documents or anything like that, so I did not
20 myself go looking through files.

21 BY MR. ELSNER:

22 Q. You, to prepare for today's
23 deposition, you didn't go back and look at the
24 documents you executed in the relevant time

1 period related to this lawsuit while you served
2 as the president of CVS Indiana, is that right?

3 MR. DELINSKY: Object to form.

4 Further object to the insinuation that a fact
5 witness has a duty to review his old files in
6 preparation for a deposition. There's no such
7 duty.

8 MR. ELSNER: Objection. You can
9 object on form or privilege. You can't give
10 speaking objections, you know that.

11 A. So I signed thousands of documents
12 during the time period we're talking about. I
13 did not go back to try to find what specific
14 documents I signed for any specific entity.

15 BY MR. ELSNER:

16 Q. Did you understand that this testimony
17 today and this lawsuit is important?

18 MR. DELINSKY: Object to form.

19 A. I understand it's important. I don't
20 know the relevance of me going back to look at
21 files from many, many years ago to try to find
22 documents that I don't even know if they exist.

23 BY MR. ELSNER:

24 Q. One of your roles as president of CVS

1 Indiana was to make sure that the distribution
2 center maintained its license with the DEA, its
3 registration to distribute controlled
4 substances, right?

5 MR. DELINSKY: Object to form.

6 A. Could you repeat that?

7 MR. ELSNER: Could you read it back?

8 (Whereupon, the reporter read back the
9 pending question.)

10 MR. DELINSKY: Object to form.

11 A. So a number of people were responsible
12 for maintaining the licenses of the facility. I
13 don't think it was my role. It was certainly
14 not my role individually.

15 BY MR. ELSNER:

16 Q. Well, you were the president. There's
17 no one higher than you at CVS Indiana, right?

18 MR. DELINSKY: Object to form.

19 Misstates testimony.

20 A. My role as president was
21 administrative. There were other people that
22 were operating the facility.

23 BY MR. ELSNER:

24 Q. Did you think it was important for CVS

1 Indiana to maintain its license as the president
2 of that entity?

3 MR. DELINSKY: Object to form.

4 A. Others are responsible for operations.
5 It's important for each of our facilities to be
6 properly licensed.

7 BY MR. ELSNER:

8 Q. Did you think it was important that
9 each facility is properly licensed, including
10 CVS Indiana as its president?

11 MR. DELINSKY: Object to form.

12 A. So other people are involved in the
13 operations of all the facilities. They have
14 responsibility, and I believe that it's
15 important that we maintain proper licenses.

16 BY MR. ELSNER:

17 Q. What steps did you take, if any, to
18 ensure that CVS Indiana was taking the
19 appropriate steps to maintain its license?

20 MR. DELINSKY: Object to form.

21 A. I don't recall anything specific with
22 regard to CVS Indiana.

23 BY MR. ELSNER:

[illegible]

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23 MR. ELSNER: I think that this is
24 totally improper coaching of a witness. I'm

1 entitled to answers to these questions, and he's
2 been coached to repeat the same phrase back to
3 me and not answer any of the questions that I'm
4 asking him. I think it's totally improper, and
5 it's obstructive.

6 MR. DELINSKY: Your questions are
7 completely and totally improper. We've spent
8 the last hour on documents that Mr. Moffatt has
9 testified plainly that he has never seen before
10 concerning events that he has testified he is
11 not familiar with. You've continued to ask
12 question after question on these topics. That
13 is what's improper about this line of questions.

14 MR. ELSNER: It's not improper because
15 he's the president of the entity, and I'm
16 entitled to ask him whether he's been made aware
17 of these activities, and if he has a view about
18 them. It's totally proper.

19 MR. DELINSKY: But his role as
20 president of the entity is an administrative
21 role only. All operations are led and managed
22 by other persons, as he has testified. It is
23 improper.

24 MR. ELSNER: Mark this next document

1 as Exhibit 9.

2 (Whereupon, CVS-Moffatt-9 was marked
3 for identification.)

4 BY MR. ELSNER:

Row	Bar Length (approx. % of total width)
1	95
2	98
3	90
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5	97
6	100
7	96
8	25
9	75
10	98
11	92
12	100
13	70
14	25
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16	85
17	88
18	90
19	70
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3 BY MR. ELSNER:

4 Q. I'd like to understand a little bit
5 about the process of purchasing controlled
6 substances at CVS.

7 CVS pharmacies fill prescriptions for
8 opioids, including OxyContin, oxycodone,
9 hydrocodone combination products, is that right?

10 MR. DELINSKY: Object to form.

11 A. Others at CVS are responsible for
12 pharmacy purchasing. I'm not involved in that
13 process.

14 BY MR. ELSNER:

15 Q. Do you know that that's what they
16 dispense?

17 MR. DELINSKY: Object to form.

18 A. Others at CVS are responsible for
19 that, and I'm aware we dispense thousands of
20 drugs.

21 BY MR. ELSNER:

22 Q. Right. Including opioids, right?

23 MR. DELINSKY: Object to form.

24 A. Others are more knowledgeable about

1 this, but generally speaking, I'm aware that
2 opioids are among the drugs that we dispense.

3 BY MR. ELSNER:

4 Q. Do all CVS pharmacies dispense
5 opioids, or only certain ones?

6 MR. DELINSKY: Object to form.

7 A. We have a handful of stores that don't
8 have pharmacies at all. I believe that the ones
9 that have pharmacies -- I don't know -- I don't
10 have particular information about what
11 prescriptions are filled at what pharmacies, so
12 others in pharmacy operations would have
13 information about that.

14 BY MR. ELSNER:

15 Q. You're the president of various
16 pharmacy entities, is that right?

17 A. Yes, that's correct.

18 Q. And so for those pharmacies, are you
19 aware whether they dispense opioids?

20 MR. DELINSKY: Object to form.

21 A. Others in pharmacy operations are more
22 versed in what stores fill what prescriptions.
23 To the extent anybody gives me information, it's
24 in my role as an attorney as opposed to in my

1 role as president of one of the store
2 subsidiaries.

3 BY MR. ELSNER:

4 Q. Is the fact that a CVS dispenses an
5 opioid a privilege issue? Are you asserting
6 privilege over whether you dispense opioids or
7 not?

8 MR. DELINSKY: Object to form.

9 You don't need to -- that question
10 should be directed to --

11 BY MR. ELSNER:

12 Q. You're the president of certain CVS
13 pharmacies. Do all those pharmacies dispense
14 opioids? Yes or no.

15 MR. DELINSKY: He's already answered
16 the question, Mike. Asked and answered.

17 A. People in pharmacy operations know
18 better than I do which pharmacies dispense which
19 drugs. That's not part of my role as a
20 corporate attorney.

21 BY MR. ELSNER:

22 Q. I know. But I can't find the most
23 knowledgeable person on every single thing at
24 CVS to answer questions or this discovery period

1 would last for decades. So I'm asking you, do
2 you know whether the pharmacies of which you are
3 the president of, do they dispense opioids?

4 Yes, no, I don't know.

5 MR. DELINSKY: Object to form. It's
6 already been asked and it's already been
7 answered.

8 MR. ELSNER: No. He's just said that
9 other people know more. But I didn't get the
10 answer.

11 MR. DELINSKY: He said right at the
12 beginning that he's not sure what pharmacies
13 dispense what pharmaceuticals. He said it,
14 Mike. It's in the transcript.

15 BY MR. ELSNER:

16 Q. I'd like to have an answer, please.

17 A. I'm not sure what pharmacies dispense
18 what drugs. That's -- other people at CVS
19 handle that.

20 Q. Did CVS ever purchase Schedule II
21 drugs like OxyContin or oxycodone directly from
22 manufacturers of those products?

23 MR. DELINSKY: Object to form.

24 A. Others at CVS are responsible for

1 pharmacy purchasing. To the extent we carried
2 any Schedule IIs, those would have come from,
3 from my understanding, wholesalers.

4 BY MR. ELSNER:

5 Q. Wholesalers?

6 A. Not from our distribution centers.

7 Q. Correct.

8 But would CVS ever purchase those
9 products directly from the manufacturer as
10 opposed to a wholesaler like Cardinal or
11 McKesson?

12 MR. DELINSKY: Object to form.

13 A. Others at CVS are responsible for
14 pharmacy purchasing. I have no knowledge of
15 which drugs are purchased from where.

16 BY MR. ELSNER:

17 Q. Have you ever been involved in
18 discussions with Purdue or any other
19 manufacturer of opioids concerning contracts to
20 purchase those drugs?

21 MR. DELINSKY: Object to form.

22 A. I have not.

23 BY MR. ELSNER:

24 Q. Do you generally know whether CVS has

1 ever purchased Schedule II drugs directly from a
2 manufacturer of those drugs or not?

3 A. Other people at CVS would be
4 responsible for pharmacy purchasing. I don't
5 have any knowledge about that.

6 Q. The Schedule II drugs that CVS
7 purchased from wholesalers like Cardinal, would
8 CVS receive any type of incentive program or
9 rebate program from those wholesalers?

10 MR. DAWSON: Object to form.

11 MR. DELINSKY: Object to form.

12 A. Others at CVS were responsible for
13 pharmacy purchasing, so I'm not knowledgeable
14 about that.

15 BY MR. ELSNER:

16 Q. Have you been involved at all in any
17 of the contract negotiations or discussions with
18 Cardinal concerning agreements to purchase
19 controlled substances from them?

20 MR. DAWSON: Object to the form.

21 A. Others at CVS were responsible for
22 that.

23 BY MR. ELSNER:

24 Q. So you've never had a role with

1 respect to that?

2 A. I don't recall ever having a role with
3 that.

4 Q. With respect to the hydrocodone
5 products that were distributed by CVS Indiana,
6 did CVS Indiana purchase those drugs from a
7 wholesaler? Did it purchase hydrocodone from a
8 wholesaler or from the manufacturer of those
9 drugs?

10 MR. DELINSKY: Object to form.

11 A. I'm not involved at all in pharmacy
12 purchasing, so I don't know whether they came
13 from a wholesaler or from manufacturers.

14 BY MR. ELSNER:

15 Q. When a pharmacy would select a
16 particular -- order a particular drug like
17 hydrocodone or a Schedule II drug, would the
18 pharmacy sell -- pharmacist select where that
19 drug would be purchased from, or delivered from,
20 or was that an automatic process?

21 MR. DELINSKY: Object to form.

22 A. Others are involved in pharmacy
23 purchasing and ordering. The others, the people
24 that are responsible for ordering, would know

1 that. I don't know that.

2 BY MR. ELSNER:

3 Q. You don't know that? Okay.

4 Would you agree with me that CVS,
5 given its size and market share, has a great
6 deal of data concerning the distribution and
7 dispensing of hydrocodone combination products?

8 MR. DELINSKY: Object to form.

9 A. Others at CVS are responsible for
10 whatever data we manage.

11 BY MR. ELSNER:

12 Q. Do you know how that data is used, if
13 at all, in conducting analysis of controlled
14 substances to prevent diversion?

15 MR. DELINSKY: Object to form.

16 A. Others in various departments would
17 have knowledge about that. I'm not involved in
18 information management or how information is
19 used.

20 BY MR. ELSNER:

21 Q. So you have no information about that?

22 A. Others at CVS would have information.
23 I am not involved in that process.

24 Q. There came a time in which hydrocodone

1 was rescheduled from a Schedule III narcotic to
2 a Schedule II narcotic. Are you aware of that?

3 MR. DELINSKY: Object to form.

4 A. I'm aware of it through, you know, my
5 role as an attorney.

6 MR. ELSNER: I'm going to mark this
7 next document as Exhibit 10.

8 (Whereupon, CVS-Moffatt-10 was marked
9 for identification.)

10 BY MR. ELSNER:

A series of 15 horizontal black bars of varying lengths and positions, representing a stylized, abstract representation of a document or a list. The bars are arranged in a vertical sequence, with some starting from the left edge and others indented. The lengths vary significantly, with some bars spanning most of the width and others being much shorter. The overall effect is a rhythmic, abstract pattern of solid black shapes against a white background.

[illegible]

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11 BY MR. ELSNER:

12 Q. Were you aware that the State of New
13 York had rescheduled hydrocodone from a Schedule
14 III to a Schedule II within the state in August
15 of 2012?

16 MR. DELINSKY: Object to form.

17 A. Others at CVS would have been
18 responsible for which drug is coming from where,
19 so I was not involved in that process.

20 BY MR. ELSNER:

21 Q. Generally when a state creates a
22 stricter requirement, either for the
23 distribution of a controlled substance or on
24 some other basis, was it CVS's policy to follow

1 that stricter requirement within those states?

2 MR. DELINSKY: Object to form.

3 A. Others at CVS would have been
4 responsible for how we complied with various
5 regulations. I'm not aware of how we addressed
6 the New York regulation that you just spoke of.

7 BY MR. ELSNER:

8 Q. But do you understand that these
9 various regulations are minimum standards, and
10 that CVS could always do more than the minimum
11 standard if it chose to?

12 MR. DELINSKY: Object to form.

13 A. Again, others at CVS are responsible
14 for compliance and so forth, so they would be
15 making that decision.

16 BY MR. ELSNER:

17 Q. But they may be, but from your
18 perspective as the president of all sorts of
19 pharmacies, the president of distribution
20 centers, did you understand that when the
21 federal government created regulations that
22 those were minimum standards that CVS could do
23 more?

24 MR. DELINSKY: Object to the form of

1 the question.

2 A. Others at CVS are responsible -- were
3 involved in that analysis. It's not part of my
4 role.

5 BY MR. ELSNER:

6 Q. Did you understand that CVS didn't --
7 wasn't required to distribute hydrocodone by the
8 government, right?

9 MR. DELINSKY: Object to form.

10 A. Others are responsible for which drugs
11 are distributed. I'm not aware of the
12 government requiring us to do anything. Pay
13 taxes, but other than that...

14 BY MR. ELSNER:

15 Q. Right. So there's no -- so CVS could
16 make a choice. They could choose to distribute
17 hydrocodone or not, right?

18 MR. DELINSKY: Object to form.

19 A. Others are responsible for deciding
20 what drugs we distribute.

21 BY MR. ELSNER:

22 Q. Well, CVS had a decision to make
23 whether to sell cigarettes or not, right?

24 MR. DELINSKY: Object to form.

1 A. That's correct.

2 BY MR. ELSNER:

3 Q. And CVS decided, I think wisely, not
4 to do so, and they made that decision, and the
5 same could have been chosen for hydrocodone,
6 right?

7 MR. DELINSKY: Object to form.

8 A. I suppose that's true. But tobacco
9 has no therapeutic value, unlike prescription
10 drugs.

11 BY MR. ELSNER:

12 Q. I agree.

13 A. So there's a very big difference
14 between deciding not to sell tobacco and
15 deciding not to sell a medication that many
16 people need.

17 Q. Understood, and I agree with that
18 statement.

19 But you would agree with me that
20 there's no requirement for CVS to distribute
21 hydrocodone?

22 MR. DELINSKY: Object to form. Asked
23 and answered.

24 A. Again, other people make the decision

1 of what drugs to sell. But I know that many
2 people need them, and I can't imagine a pharmacy
3 deciding not to sell a drug that's needed.

4 BY MR. ELSNER:

5 Q. Under any circumstances?

6 A. It's not my decision.

7 Q. CVS was a member of the National
8 Association of Chain Drugstores, correct?

9 A. Yes, and we still are. It's not was,
10 is.

11 Q. Is. That's fair.

12 And that CVS contributes millions of
13 dollars to the NACDS, isn't that right?

14 MR. DELINSKY: Object to form.

15 A. I don't -- I'm not involved in what --
16 I don't know that we would contribute. I'm not
17 familiar with NAC -- our involvement with NACDS.
18 I know we're a member.

19 MR. ELSNER: I'm going to mark this
20 next exhibit, which is Exhibit 11.

21 (Whereupon, CVS-Moffatt-11 was marked
22 for identification.)

23 BY MR. ELSNER:

24 Q. This is also from CVS Health's

1 website. And it's Motley Rice 207.

2 And there's a section on the website
3 with Trade Association and Coalition
4 Participation.

5 Do you see that?

6 A. Yes.

7 Q. Okay. If you turn to the next page,
8 there's a listing here among the trade
9 associations as the National Association of
10 Chain Drugstores.

11 Do you see that?

12 A. Yes.

13 Q. Okay. And on the top, this is a list
14 of contributions/dues to the trade associations
15 and coalitions. That's what the banner reads on
16 the top of the page, is that right?

17 A. Yes.

18 Q. Okay. And next to the National
19 Association of Chain Drugstores, the
20 contribution from January, 2017 to March, 2018
21 was a little over \$1.5 million, right?

22 A. Yes.

23 Q. Okay. And then if you go to the next
24 page, 2016, for National Association of Chain

1 Drugstores the amount was over \$1.4 million in
2 dues and contributions, is that right?

3 A. The way it's characterized is
4 contributions/dues. In some cases it's
5 contributions. In other cases it's dues.

6 Q. But regardless, the number in 2016 for
7 the National Association of Chain Drugstores was
8 \$1.4 million, is that right?

9 A. That -- yes, that's what this says.

10 Q. And for 2015, that amount was also
11 about a little over \$1.4 million.

12 MR. DELINSKY: I'm sorry. What year,
13 Mike?

14 MR. ELSNER: 2015 on the next page.

15 A. Again, that's what this says, yes.

16 BY MR. ELSNER:

17 Q. On the next page, in 2014 that amount
18 was \$1.2 million?

19 A. That's what this says, yes.

20 Q. So you'd agree with me that CVS Health
21 was contributing dues and other contributions to
22 the National Association of Chain Drugstores at
23 least during this period of time over a million
24 dollars a year, is that right?

1 MR. DELINSKY: Object to form.

2 A. During the time frame that we were
3 just reading, yes. It looks like it was lower
4 in the prior years.

5 BY MR. ELSNER:

6 Q. Yes, that's true. That's correct.

7 In 2013, that amount was half a
8 million dollars, is that right?

9 A. Let's see.

10 Q. That's Page 6.

11 A. Yes. 526,000.

12 Q. In 2012 it was 421,000, is that right?

13 A. Yes.

14 Q. Okay. Do you know why the amount
15 doubled in 2013 and '14, around the same time
16 that hydrocodone was being rescheduled by the
17 United States Government?

18 A. I have no involvement in how dues are
19 paid for these organizations, so others at CVS
20 would be knowledgeable about that.

21 Q. Are you aware that various executives
22 of CVS have served as directors of the National
23 Association of Chain Drugstores?

24 MR. DELINSKY: Object to form.

1 A. Yes, I am aware of that.

2 BY MR. ELSNER:

3 Q. Do you know that Larry Merlo served as
4 the president and -- who is the president and
5 chief executive officer of CVS Health, he served
6 as the director of the National Association of
7 Chain Drugstores in 2015?

8 MR. DELINSKY: Object to form.

9 A. Larry Merlo is his name. I'm not
10 familiar with what specific role he played at
11 NACDS.

12 BY MR. ELSNER:

13 Q. Okay. But you were generally aware
14 that there were directors of CVS or executives
15 at CVS that served in leadership positions with
16 the National Association of Chain Drugstores?

17 A. Yes, I was aware of that.

18 Q. Okay. Do you know who in particular?

19 A. Mr. Merlo, as you said. I believe
20 John Roberts might have been another.

21 Q. Okay.

22 A. Again, I'm not really involved in our
23 relationship with NACDS.

24 Q. What about -- is it Kevin Hourican?

1 A. Hourican. I know Kevin. I'm not
2 familiar with any role he might play at NACDS.

3 Q. And he was the executive vice
4 president of CVS Health and the president of CVS
5 Pharmacy at one point in time, is that right?

6 A. That's his current title.

7 Q. Current title?

8 A. Yeah, in 2018 he became that.

9 Q. He became that.

10 What about the Healthcare Distribution
11 Management Association, were you aware that CVS
12 was a member of that trade association?

13 MR. DELINSKY: Object to form.

14 A. I'm not familiar with that trade
15 association. I'm not involved in which
16 associations we participate in.

17 BY MR. ELSNER:

18 Q. Were you aware that the National
19 Association of Chain Drug Stores had opposed the
20 rescheduling of hydrocodone?

21 A. I'm not -- others at CVS were involved
22 with NACDS. We're not -- obviously we're not
23 the only participant in that organization, so
24 I'm not familiar with NACDS's activities.

1 Q. Did you know that NACDS was opposing
2 the rescheduling of hydrocodone combination
3 products?

4 MR. DELINSKY: Object to form.

5 A. Others at CVS were involved with
6 NACDS. I was not familiar with our relationship
7 and what their activities might have been.

8 (Whereupon, CVS-Moffatt-12 was marked
9 for identification.)

10 BY MR. ELSNER:

11 Q. I'm going to mark this as Exhibit 12.
12 This is CVS-103475.

█ [REDACTED]

█ [REDACTED]

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[illegible]

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■ [REDACTED]

■ [REDACTED]

7 Q. Did CVS support the rescheduling of
8 hydrocodone or not?

9 A. Others at CVS would be responsible for
10 that.

11 Q. Do you know the profit margin on the
12 dispensing of hydrocodone products?

13 A. Others at CVS are involved in the
14 financials. That's not my area.

15 Q. Are you aware of the profit margin on
16 distributing hydrocodone combination products at
17 CVS?

18 MR. DELINSKY: Object to the form.

19 A. Others at CVS are responsible for all
20 financial information.

21 BY MR. ELSNER:

22 Q. Are you aware that as a member of the
23 National Association of Chain Drug Stores that
24 CVS participated in an amicus brief in the

1 Masters case?

2 MR. DELINSKY: Object to the form of
3 the question.

4 A. Others at CVS are involved with any
5 involvement we have with NACDS. I'm not
6 familiar with the Masters case or any amicus
7 brief.

8 BY MR. ELSNER:

9 Q. Have you ever read the Southwood
10 decision or the Masters decision?

11 A. Others at CVS would be -- would follow
12 that sort of thing more closely. It's possible,
13 but I don't recall.

14 Q. Did you know that CVS through these
15 trade associations participated in an amicus
16 brief in the Masters case?

17 MR. DELINSKY: Object to the form of
18 the question.

19 A. Others at CVS were involved with
20 NACDS, so they would be informed about that.

21 BY MR. ELSNER:

22 Q. Who at CVS would have made the
23 decision to participate or not in that amicus
24 brief?

1 A. I am not sure. I don't know.

2 Q. Would it have been a decision in the
3 legal department, or would it have been a
4 decision in the regulatory affairs department?

5 MR. DELINSKY: Object to form.

6 A. Generally speaking, legal matters are
7 legal -- the legal department decisions
8 ultimately.

9 BY MR. ELSNER:

10 Q. And who in the legal department would
11 have made that decision?

12 MR. DELINSKY: Object to form. Asked
13 and answered.

14 A. Others in the legal department. I'm
15 not really sure. It would depend on the type of
16 matter, and I'm not familiar with the Masters
17 case. I don't know.

18 BY MR. ELSNER:

19 Q. Okay. Well, the Masters decision
20 involved a suspicious order monitoring program
21 and whether it met the requirements of the
22 Controlled Substances Act. So assuming that to
23 be the case, who within the legal department
24 would have made the decision to participate or

1 not in the Masters amicus brief filed by the
2 National Association of Chain Drugstores?

3 A. I'm not sure. It would probably be --
4 I don't know. I don't know enough about the
5 matter.

6 Q. Have you ever attended any CLE
7 programs at CVS or anywhere else that discussed
8 the Masters decision?

9 A. I don't recall any CLEs that discussed
10 it, but we do a lot of them.

11 MR. ELSNER: Why don't we take a quick
12 break.

13 THE VIDEOGRAPHER: We're going off the
14 record at 11:05 a.m.

15 (Whereupon, a recess was taken.)

16 THE VIDEOGRAPHER: We're back on the
17 record at 11:17 a.m.

18 BY MR. ELSNER:

19 Q. Mr. Moffatt, you are aware that there
20 have been instances in which the DEA has issued
21 suspension orders to CVS pharmacies, correct?

22 A. I am aware of that.

23 Q. Okay. And you understand that when a
24 pharmacy or a distribution center is not

1 adhering to the requirements of the Controlled
2 Substances Act that there's a danger that that
3 facility or pharmacy could lose its DEA license
4 or registration, correct?

5 MR. DELINSKY: Object to form.

6 A. I'm aware that that has happened, you
7 know. It's not my area, other people handle
8 that sort of thing.

9 BY MR. ELSNER:

10 Q. But you're aware that the DEA has that
11 authority, right?

12 A. I'm generally aware.

13 Q. Okay. And are you aware of any other
14 actions that the DEA could take against a
15 pharmacy or distribution center other than
16 issuing a suspension order?

17 A. It's not my area. I don't handle the
18 government investigation type things, but I'm
19 aware that there are other penalties and fines
20 and letters and so forth.

21 Q. And there are actions that could be
22 brought by the DEA against those pharmacies to
23 remove those registrations and licenses, is that
24 right?

1 MR. DELINSKY: Object to form.

2 A. Again, not my area, but I'm generally
3 aware that that's possible, yes.

4 BY MR. ELSNER:

5 Q. Okay. And you're aware, are you not,
6 that the DEA issued an immediate suspension
7 order for two CVS pharmacies in Florida because
8 they posed an imminent danger to public health
9 or safety, correct?

10 MR. DELINSKY: Object to form.

11 A. I am aware of the action in Florida.
12 I don't know about the characterization as to
13 the reason that you stated.

14 BY MR. ELSNER:

15 Q. Okay. You know that the DEA suspended
16 two CVS pharmacies from distributing controlled
17 substances in Florida, is that right?

18 MR. DELINSKY: Object to form.

19 A. I am aware of that situation, yes.

20 BY MR. ELSNER:

21 Q. And those pharmacies were the Holiday
22 CVS, LLC pharmacies, numbers 5195 and 219, is
23 that right?

24 A. Those store numbers sound familiar.

1 We have a lot of stores. Holiday CVS operates
2 all or virtually all the stores in Florida.

3 Q. And you're the president of Holiday
4 CVS, or were, is that right?

5 A. I am currently, since the same time
6 frame as Indiana and Rx Services, early 2011.

7 Q. In what year did you become the
8 president of Holiday CVS?

9 A. I think it would have been the
10 beginning of 2012.

11 Q. Okay. And prior to that were you a
12 secretary of Holiday CVS?

13 A. Yes.

14 Q. Starting in 2006, or was it before?

15 A. Again, I don't know specific titles
16 for specific entities back at that time frame.
17 I might have been assistant secretary and then
18 secretary. But probably secretary at that
19 point.

20 Q. Okay. And are you the president of
21 Holiday CVS today?

22 A. Yes.

23 MR. ELSNER: I'm going to mark this as
24 Exhibit 13.

1 (Whereupon, CVS-Moffatt-13 was marked
2 for identification.)

3 BY MR. ELSNER:

4 Q. And this is a declaration of Joseph
5 Rannazzisi. And we've seen that name before.
6 He was with the DEA at this time, is that right?

7 A. Yes, that's what it says in the first
8 couple paragraphs here.

9 Q. All right. He's the deputy assistant
10 administrator for the DEA's Office of Diversion
11 Control at this time in 2012, is that right?

12 MR. DELINSKY: Object to form.

13 A. That's what the Paragraph 1 says, yes.

14 BY MR. ELSNER:

15 Q. All right. The caption here is for an
16 action that was filed in the U.S. District Court
17 for the District of Columbia, Holiday CVS versus
18 Eric Holder.

19 Do you see that?

20 A. Yes, I see the caption.

21 Q. And are you aware this action was
22 taken in the district court in DC?

23 A. Others in the legal department would
24 have been involved in this. I'm not familiar

1 with this particular action. So I see that, you
2 know, it's Holiday CVS, Eric Holder was attorney
3 general, but I don't know anything about, you
4 know, this matter.

5 Q. So as the president of Holiday CVS,
6 you didn't know that this action was pending in
7 federal court in DC?

8 MR. DELINSKY: Object to form.

9 A. To the extent I knew anything about
10 it, it would have been in my role as an
11 attorney, so...

12 BY MR. ELSNER:

13 Q. Before we get to what you know, did
14 you know that it existed or not, the filing was
15 made?

16 MR. DELINSKY: Objection. Asked and
17 answered.

18 A. I would need to know more about the
19 case. Just reading the caption.

20 BY MR. ELSNER:

21 Q. Fair enough.

22 A. I'm not a litigator. I'm a corporate
23 guy, so I would need to know more about where
24 this fits into the whole picture.

1 Q. Okay. Let's go through it a little
2 bit.

3 If you turn to Paragraph 3 of the
4 declaration, which is on Page 2, in the second
5 sentence it reads "I participated in the
6 decision-making process that led to the issuance
7 of an Immediate Suspension Order against Holiday
8 CVS, CVS Pharmacy 219 and CVS Pharmacy 5195 on
9 February 2, 2012." Is that right?

10 A. Yes, that's what that says.

11 Q. Okay. And this was filed in 2012, and
12 so at this time you were the president of
13 Holiday CVS?

14 A. I believe so, yes.

15 Q. Okay. If you turn to Page 9 of the
16 declaration, which is Paragraph 24, there's a
17 heading "CVS 219 and CVS 5195." And if it's
18 easier to use the screen, that's available for
19 you, or the paper, whatever you'd prefer.

20 It says in Paragraph 24 that CVS 219
21 was located at 3798 Orlando Drive in Sanford,
22 Florida, and is registered with the DEA as a
23 chain pharmacy in Schedules II, III, IV and V
24 controlled substances under a DEA registration

1 number. And then in Paragraph 25 it says CVS
2 5195 was located at 4639 West 1st Street in
3 Sanford, Florida.

4 Do you see that?

5 A. Yeah, well, it says "located at," not
6 "was." They still are. Yeah.

7 Q. I wasn't sure about store 5195. Are
8 you? Is it still located at that address?

9 A. I'm not sure. I don't know the
10 particulars for all of this.

11 Q. That's why I said "was" because I
12 don't know if today it's located at the same
13 address. Do you know?

14 A. I don't know. I don't know the
15 particulars. I just know that the store still
16 exists.

17 Q. Were you aware that these were the two
18 stores that were the subject of the DEA
19 suspension in 2012?

20 MR. DELINSKY: Object to form.
21 Objection, asked and answered.

22 A. I am aware of that because, you know,
23 I was informed based on my role as an attorney.

24 BY MR. ELSNER:

1 Q. Okay. And these two stores were
2 Holiday CVS stores, correct?

3 A. That's correct.

4 Q. Okay. It says in the next section,
5 "Notice to CVS of Diversion Problems." In
6 Paragraph 26 it says that "On December 8, 2010,
7 DEA hosted a meeting with CVS at the DEA West
8 Palm Beach Resident Office." And then it lists
9 a group of people who were in attendance.

10 Were you aware that CVS held a
11 meeting -- I'm sorry, that the DEA held a
12 meeting with CVS long before the suspension
13 order was issued in December of 2010 to warn
14 them of problems of diversion from their
15 pharmacies?

16 MR. DELINSKY: Object to form.

17 A. I'm not at all familiar with this
18 document, so I don't know the context of how
19 this was put together. I wasn't involved in the
20 meeting certainly, so I don't really know
21 anything about what was said or anything at the
22 meeting.

23 MR. DELINSKY: Mike, just hold on.

24 Did you say you were not, wasn't involved in the

1 meeting?

2 THE WITNESS: Exactly. I was -- no,
3 I'm not on the list here.

4 MR. DELINSKY: Okay.

5 THE WITNESS: So, no, I was not
6 involved, and I wouldn't have been. It's not my
7 area.

8 BY MR. ELSNER:

9 Q. In Paragraph 27 it says that John
10 Gilbert, Counsel for CVS/Caremark, made a brief
11 statement. "Mr. Gilbert stated," this is a
12 quote from Mr. Rannazzisi's affidavit, "that CVS
13 was aware of the pill mill and/or pain clinic
14 situation and the diversion of controlled
15 substances, primarily oxycodone, in Florida."

16 What was CVS aware of the pain mill
17 and pain clinic situation in Florida at this
18 time?

19 MR. DELINSKY: Object to form.

20 A. I don't know anything about this
21 meeting, or if this is an accurate
22 characterization of what he said. I don't know
23 Mr. Gilbert. Again, it's not my area.

24 BY MR. ELSNER:

1 Q. You don't know Mr. Gilbert, counsel
2 for CVS/Caremark?

3 A. That's not a real entity name, but
4 just as a corporate lawyer, that bugs me a
5 little bit. But I know Mr. Gilbert. I know the
6 name. But again, I think he's a litigator. And
7 I'm not a litigator, I'm a corporate person, so
8 I've seen the name, but I've never interacted
9 with him.

10 Q. Is he in-house at CVS, or is he
11 outside counsel?

12 A. He's outside counsel.

13 Q. Do you know what firm he's with?

14 A. I don't. I didn't have direct
15 involvement with him.

16 Q. And as the president of Holiday CVS,
17 no one informed you of the pill mill and/or pain
18 clinic situation in Florida?

19 MR. DELINSKY: Object to form.

20 A. Others at CVS would have been
21 responsible for that sort of thing. Nobody
22 informed me of anything as president. Again, as
23 a lawyer for the company I may have been
24 informed, but not as president.

1 BY MR. ELSNER:

2 Q. If you turn to Paragraph 29 on
3 Page 11, it reads "CVS 219's and CVS 5195's
4 District Supervisor, Jennifer Lalani,
5 acknowledged that she was aware of an increase
6 in the number of oxycodone prescriptions that
7 have been presented to CVS, especially in the
8 Orlando, Florida area." She then says that
9 she -- Mr. Rannazzisi says that "Ms. Lalani also
10 made reference to an October '10 letter sent to
11 the pharmacies from the Hillsborough County
12 Sheriff David Gee. In that letter, Sheriff Gee
13 made a plea to area pharmacies to work with law
14 enforcement and closely scrutinize the
15 prescriptions they receive in order to deal with
16 the prescription drug epidemic in Florida."

17 Were you aware that CVS pharmacies
18 that you were president of received a letter
19 from the sheriff in Hillsborough County?

20 MR. DELINSKY: Object to form.

21 A. Others at CVS would have been
22 responsible for operations and compliance, and
23 they would have been informed of this. I would
24 not have been informed of this.

1 BY MR. ELSNER:

2 Q. And you were not?

3 A. Others at CVS that were responsible
4 for this sort of thing were aware.

5 Q. But you were not?

6 A. Others were.

7 Q. Others were, but you were not, right?

8 A. I may have been informed of something
9 in my capacity as an attorney. I don't recall.

10 Q. If you turn to Page 32, it reads
11 "Mrs. Lalani" -- sorry, I'll let you get there.
12 Not Page 32, sorry, Page 12, Paragraph 32. My
13 apologies.

14 It reads "Ms. Lalani confirmed that
15 CVS 219 was located in Sanford, Florida and was
16 under her supervision. Ms. Lalani agreed that
17 the volume of oxycodone purchased by this
18 pharmacy was extremely high; Ms. Lalani was
19 unable to explain why the volume was so high."

20 Were you aware that the two
21 pharmacies -- that CVS 219 that you were the
22 president of had a high volume of oxycodone
23 purchased by this pharmacy?

24 MR. DELINSKY: Object to form.

1 A. Others at CVS would have been
2 responsible for operations and compliance, and
3 they would have been involved in this. I wasn't
4 informed as president. As an attorney I may
5 have been informed of things, but I don't recall
6 seeing this.

7 BY MR. ELSNER:

8 Q. It then reads in Paragraph 33 that on
9 August 12, 2011 that the DEA hosted a second
10 meeting with CVS at the DEA Weston Resident
11 Office, and that in attendance at the meeting
12 were DEA representatives and 24 supervisors and
13 managers from various South Florida CVS
14 pharmacies.

15 Were you aware that the DEA hosted a
16 second meeting solely as president of CVS
17 Holiday Inn August 12, 2011?

18 A. Others at CVS would have been involved
19 in this -- this situation, but I don't recall
20 being involved in it.

21 Q. As president of CVS Holiday, you were
22 not informed, correct?

23 MR. DELINSKY: Object to form.

24 A. Others would have been involved in

1 this type of meeting. You know, as an attorney
2 I may have been informed about it, but not as
3 president.

4 BY MR. ELSNER:

5 Q. Were you aware that the DEA conducted
6 an investigation of these two pharmacies, CVS
7 pharmacies in Florida, and interviewed employees
8 as part of its investigation?

9 A. Others would have been involved
10 directly in that situation. I was not involved
11 in that.

12 Q. If you turn to Page 15 of the
13 affidavit, Paragraph 41, it says the "DEA
14 personnel interviewed employees from both CVS
15 219 and CVS 5195." And under A, it says that
16 "The Pharmacist in Charge at CVS 219...stated
17 that the majority of the diagnosis codes listed
18 by the prescribing practitioners on the
19 oxycodone prescriptions were the same, and that
20 customers requested certain brands of oxycodone,
21 referring to them as 'Ms' or 'blues.'"

22 Were you aware of that?

23 A. I was not. The others were involved
24 in this situation. I was not directly involved.

1 And I don't know if that's Ms. or Ms. But in
2 any event, other attorneys would have been
3 involved in this type of situation.

4 BY MR. ELSNER:

5 Q. Have you heard of oxycodone being
6 referred to as Ms?

7 A. No. I just didn't see a period,
8 that's why I said Ms as opposed to Ms. I am not
9 aware of them being referred to by either name.

10 Q. Under paragraph B it reads "One of the
11 pharmacists at CVS 219...stated that many of the
12 patients receiving oxycodone prescriptions
13 received the same cocktail of prescriptions,
14 including oxycodone 30 milligrams, oxycodone
15 15 milligrams, alprazolam 2 milligrams."

16 Were you aware that individuals coming
17 to CVS 219 were -- held prescriptions for a
18 cocktail of drugs?

19 MR. DELINSKY: Object to form.

20 A. I was not involved in any of this. I
21 wasn't there. I don't know that that's her
22 characterization of the group of prescriptions
23 or if it's the -- Mr. Rannazzisi. But, you
24 know, you've read that correctly.

1 BY MR. ELSNER:

2 Q. Well, it states here that Susan Masso,
3 who is one of the pharmacists at CVS, "stated
4 that many of the patients."

5 Do you see that there?

6 MR. DELINSKY: Object to form.

7 A. I do see that, and I see the word
8 "cocktail" in quotes, and I don't know if that
9 means that's a quote from her or if that's his
10 characterization of the group of prescriptions.

11 BY MR. ELSNER:

12 Q. Well, regardless, she said patients
13 were coming in with prescriptions for multiple
14 different drugs that are listed there, oxycodone
15 30 milligrams and 15 milligrams and the others,
16 correct?

17 A. Again, I was not involved in this,
18 others were. That is what this paragraph says.

19 Q. Okay. And in paragraph C it reads
20 that "The Pharmacist in Charge at CVS 5195,
21 Jessica Merrill, stated that she set a daily
22 limit of how many oxycodone 30-milligram
23 prescriptions the pharmacy would fill each day.
24 The limit was set based upon the amount of

1 oxycodone the pharmacy had on-hand each day.
2 PIC Merrill" stated "that the reason she set
3 this daily limit was to ensure that the pharmacy
4 had enough oxycodone 30 milligrams to fill the
5 prescriptions for 'real pain patients.'"

6 Were you aware of that?

7 MR. DELINSKY: Object to form.

8 A. I was not involved in this. Other
9 attorneys were. I was not at the interview or
10 anything like that, so this is the first I'm
11 reading of it.

12 BY MR. ELSNER:

13 Q. Well, as an executive at CVS, would it
14 concern you that a CVS Pharmacy was dispensing
15 drugs to patients that were not in real pain,
16 oxycodone in particular?

17 MR. DELINSKY: Object to form.

18 A. I was not involved in this at all, and
19 I don't know anything about how this was being
20 characterized, so I don't have a view on that.

21 BY MR. ELSNER:

22 Q. Well, do you have any reason to
23 believe it's being mischaracterized by Joseph
24 Rannazzisi?

1 A. I have no reason to believe either way
2 whether it is correct or incorrect. I wasn't --

3 Q. You're not suggesting that he lied
4 under oath?

5 A. No. I'm saying I -- you know, I
6 wasn't there, I don't know -- I wasn't at any of
7 these interviews, don't know anything about it.

8 Q. Well, does it concern you as an
9 executive at CVS that pharmacists were saving
10 aside oxycodone in the height of the opioid
11 epidemic for, I quote, real pain patients?

12 MR. DELINSKY: Object to form.
13 Objection, asked and answered.

14 A. You know, I'm not involved in this
15 area, and I don't have a view on it.

16 BY MR. ELSNER:

17 Q. I know, but you've been at CVS a
18 really long time. Does it concern you, this
19 paragraph? Does it concern you if it's true?

20 MR. DELINSKY: Object to form.
21 Objection, asked and answered.

22 A. CVS is -- we aim to comply with laws,
23 and so I -- you know, generally speaking that's
24 how we operate, so I would be concerned if we

1 were not, but I have no information to lead me
2 to believe one way or another.

3 BY MR. ELSNER:

4 Q. But this would indicate that, in fact,
5 in this instance CVS was not complying with
6 federal regulations, that they were, in fact,
7 selling drugs, oxycodone in particular, to
8 patients that they knew were not in real pain,
9 correct?

10 MR. DELINSKY: Object to form.

11 A. I wasn't involved in the interviews.
12 I don't know anything about the interviews, so I
13 can't really form an opinion on that.

14 BY MR. ELSNER:

15 Q. If you turn to Page 57 -- sorry,
16 Page 24, Paragraph 57. There's a heading just
17 above that paragraph that says the "DEA Issues
18 Immediate Suspension Orders for CVS 219 and CVS
19 5195," correct?

20 A. Just above that paragraph, yes, I see
21 that.

22 Q. And then it says that "Through my
23 training and experience" -- and this is Joseph
24 Rannazzisi's declaration again -- "as both a law

1 enforcement officer and as a licensed
2 pharmacist, I believe that CVS 219's and CVS
3 5195's DEA registration to handle and distribute
4 any type of controlled substance poses an
5 imminent danger to the public health and
6 safety."

7 Did I read that correctly?

8 A. Yes, you read it correctly.

9 Q. Were you aware as president of Holiday
10 CVS at this time that the DEA had determined
11 that a suspension order should be issued because
12 these two CVS stores posed an imminent danger to
13 public health and safety?

14 MR. DELINSKY: Object to form.

15 A. I was not involved in this whole
16 situation, and we're kind of picking and
17 choosing paragraphs in a very long document, so
18 that is what it says here.

19 BY MR. ELSNER:

20 Q. And you were not made aware of that as
21 the president of Holiday CVS, the president of
22 these two stores?

23 MR. DELINSKY: Object to form.

24 A. I was made aware of it because I'm an

1 attorney in the legal department, but not due to
2 my role as president of Holiday.

3 MR. ELSNER: Okay. I'm going to mark
4 this next document as the next exhibit, which is
5 MR 68, and it's Exhibit 14 to the deposition.

6 (Whereupon, CVS-Moffatt-14 was marked
7 for identification.)

8 BY MR. ELSNER:

9 Q. This is CVS-60796 through 60804. This
10 is a settlement agreement, is it not, between
11 CVS Health and the -- and its subsidiaries and
12 the DEA related to the DEA's investigation of
13 stores 219 and 5195 in Sanford, Florida,
14 correct?

15 A. Yes, that appears to be correct.

16 Q. And it was the DEA's position, the US
17 government's position that CVS had failed in its
18 responsibilities under the Controlled Substances
19 Act, correct?

20 MR. DELINSKY: Object to form.

21 A. I was not involved in this settlement
22 agreement, so I mean, I'd have to go through the
23 whole thing to agree with your characterization
24 of what's in here.

1 BY MR. ELSNER:

2 Q. Well, if we turn to Page 3 of the
3 settlement agreement, under paragraph I, it
4 reads the "DEA revoked the registrations issued
5 to CVS stores 219 and 5195 in an order published
6 on October 12, 2012" in the Federal Register.
7 The "DEA revoked the registrations of the DEA
8 stores...based, among other things, on their
9 failure to fulfill their corresponding
10 responsibilities under 21 CFR 1306.04," which is
11 the Controlled Substances Act.

12 Are you aware of that?

13 A. I was not involved in putting this
14 together or anything like that. I was generally
15 aware of the actions taken against the two
16 stores.

17 Q. Okay. And were you aware in
18 Paragraph 12 that CVS -- on Page 3, that "CVS
19 acknowledges that certain CVS/pharmacy retail
20 stores did dispense certain controlled
21 substances in a manner not fully consistent with
22 their compliance obligations under the CSA and
23 its implementing regulations"?

24 A. I see that. It's paragraph K.

1 Q. Yes.

2 A. Yes.

3 Q. So, in fact, CVS agreed, did it not,
4 that there were certain violations of the
5 Controlled Substances Act in these two stores in
6 Florida?

7 MR. DELINSKY: Object to form.

8 A. It says CVS acknowledges that certain
9 stores dispensed controlled substances in a
10 manner not fully consistent with their
11 compliance obligations under the CSA and its
12 implementing regulations.

13 BY MR. ELSNER:

14 Q. Right.

15 A. That's what it says, yes.

[REDACTED]

[REDACTED]

■ [REDACTED]

☐ [redacted]

[illegible]

[illegible]

[illegible]

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1	95
2	98
3	99
4	99
5	85
6	100
7	100
8	100
9	95
10	30

Row	Bar Start (approx. %)	Bar End (approx. %)
1	28	100
2	9	85
3	9	79
4	28	87
5	19	100
6	9	91
7	9	36

	[REDACTED]
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■	[REDACTED]	
■		[REDACTED]
■	■	[REDACTED]
■	[REDACTED]	
■	■	[REDACTED]
■	[REDACTED]	
■	■	[REDACTED]
■	[REDACTED]	

[illegible]

[illegible]

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[illegible]

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A horizontal bar chart titled 'Percentage of respondents who believe that the government should take action to address climate change'. The chart is broken down by age group (18-29, 30-49, 50-69, 70+) and gender (Male, Female). The x-axis represents the percentage of respondents, ranging from 0% to 100%. The y-axis lists the demographic groups. The data is as follows:

Age Group	Gender	Percentage
18-29	Male	92%
	Female	88%
30-49	Male	85%
	Female	82%
50-69	Male	78%
	Female	75%
70+	Male	72%
	Female	68%

[illegible]

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■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]

6 MR. ELSNER: I'm going to mark this
7 next exhibit, which is Exhibit 16. This is MR
8 70.

9 (Whereupon, CVS-Moffatt-16 was marked
10 for identification.)

11 BY MR. ELSNER:

12 Q. Were you aware the DEA was conducting
13 an investigation of CVS pharmacies in Maryland?

14 A. Others were handling this more
15 directly. I was generally aware based on my
16 role as an attorney.

17 Q. The investigation concerned potential
18 violations of the Controlled Substances Act, and
19 in particular it related to CVS's obligations
20 with respect to corresponding responsibility
21 between the pharmacist and the physician. Were
22 you aware of that?

23 MR. DELINSKY: Object to form.

24 A. Others were handling this more

1 directly. I was generally aware of that based
2 on my role as an attorney.

3 BY MR. ELSNER:

4 Q. If you turn to -- what I've placed
5 before you is actually a settlement agreement
6 which was entered into by CVS Pharmacy, Inc.
7 with the DEA related to the DEA's investigation
8 in Maryland, is that right?

9 A. Yes, that's what this appears to be.

10 Q. Okay. And if you turn to Page 2 of
11 the settlement agreement under paragraph F, it
12 reads that "The United States contends that CVS
13 failed to fulfill its corresponding
14 responsibilities under 21 CFR 1306.04," which is
15 the Controlled Substances Act, and "is subject
16 to civil penalties."

17 Did I read that correctly?

18 A. You did read that correctly.

19 Q. Okay. And in paragraph E it states
20 that "CVS acknowledges that it has a
21 corresponding responsibility to dispense only
22 those prescriptions that have been issued for a
23 legitimate medical purpose by an individual
24 practitioner acting in the usual course of

1 professional practice and that knowingly filling
2 a prescription not in the usual course of
3 professional treatment or in legitimate and
4 authorized research subjects CVS to penalties
5 under the CSA," or the Controlled Substances
6 Act, correct?

7 A. Yes, you read that correctly.

8 Q. Were you aware that CVS acknowledged
9 in paragraph G that certain CVS Pharmacy retail
10 stores in Maryland did dispense certain
11 controlled substances in a manner not fully
12 consistent with their compliance obligations
13 under the CSA?

14 A. You read that portion of the paragraph
15 G correctly as well.

16 Q. Were you aware that CVS had made that
17 acknowledgment in the settlement agreement?

18 A. I was not involved in putting this
19 settlement agreement together, and so I wouldn't
20 have been involved in the wording here.

21 Q. If you turn to Page 3, it states --
22 Page 3, Paragraph 3 at the very bottom, it
23 states that CVS will pay the United States a sum
24 of \$8 million in settlement, is that correct?

1 A. Yes, that's what Paragraph 3 says.

2 Q. Were you aware that CVS had entered
3 into a settlement with the DEA related to
4 violations of corresponding responsibilities of
5 its CVS pharmacies in Maryland for an amount of
6 \$8 million?

7 MR. DELINSKY: Object to form.

8 A. I wasn't involved in the whole
9 process, but that appears to be what this says.
10 It also says that it was done to avoid the
11 delay, expense, and inconvenience and
12 uncertainty of litigation. So it's not
13 necessarily, you know, an admission, but...

14 BY MR. ELSNER:

15 Q. The DEA had reached certain findings,
16 and you could have fought those findings in
17 court, but rather than doing that you entered
18 into a settlement in the amount of \$8 million,
19 is that right?

20 MR. DELINSKY: Object to form.

21 A. Again, there's another attorney, or
22 other attorneys would have been responsible for
23 making that sort of decision, and the reasons
24 behind it. I'm not involved in that process.

1 BY MR. ELSNER:

2 Q. Okay. But CVS agreed to it and they
3 signed -- Betsy Ferguson on behalf of CVS
4 Pharmacy, Inc. executed the settlement agreement
5 in February of 2016, correct?

6 A. Yes.

7 MR. DELINSKY: Could we take a quick
8 five minutes?

9 MR. ELSNER: Sure. Absolutely.

10 THE VIDEOGRAPHER: We're going off the
11 record at 12:16 p.m.

12 (Whereupon, a recess was taken.)

13 THE VIDEOGRAPHER: We're back on the
14 record at 12:24 p.m.

15 BY MR. ELSNER:

16 Q. Mr. Moffatt, were you a secretary or
17 president of any of the pharmacies in Maryland
18 that were subject of the DEA investigation and
19 CVS settlement with the DEA?

20 MR. DELINSKY: Object to form.

21 A. I was president of the entity that
22 operated those pharmacies, yes.

23 BY MR. ELSNER:

24 Q. Were you aware that the DEA also

1 conducted an investigation of certain CVS
2 pharmacies in Alabama?

3 MR. DELINSKY: Object to form.

4 A. Others at CVS are responsible for all
5 of those sort of matters, so I don't recall
6 specifically information about Alabama.

7 BY MR. ELSNER:

8 Q. Let me show you Moffatt Exhibit 17,
9 which is a settlement agreement between CVS and
10 the DEA related to entities in Alabama.

11 (Whereupon, CVS-Moffatt-17 was marked
12 for identification.)

13 BY MR. ELSNER:

14 Q. If I could -- the DEA was
15 investigating certain pharmacies in Alabama,
16 particularly in Calera, Alabama, for certain
17 recordkeeping and reporting violations of
18 controlled substances, regulations in place to
19 guard against theft and diversion. This is
20 paragraph F on Page 2. Do you see where I'm at?

21 A. Yes.

22 MR. DELINSKY: Objection.

23 A. I see paragraph F.

24 BY MR. ELSNER:

1 Q. And then in paragraph G on Page 2 that
2 as a result of the DEA's investigation and its
3 inspection of this CVS store in Calera, Alabama,
4 that the United States contends that on or
5 before the effective date of the agreement CVS
6 Calera violated the CSA, the Controlled
7 Substances Act, and then it lists three
8 violations that the DEA believed exists, is that
9 correct?

10 MR. DELINSKY: Object to form.

11 A. I was not involved in the preparation
12 of this, but that is what Paragraph G says.

13 BY MR. ELSNER:

14 Q. On Page 3 of the agreement under
15 "Terms and Conditions," CVS agreed to pay a
16 \$1 million sum in settlement of this contention
17 and these alleged violations, is that right?

18 MR. DELINSKY: Object to form.

19 A. I wasn't involved in this settlement
20 or anything, but it appears that that's what
21 Paragraph 1 on Page 3 says.

22 BY MR. ELSNER:

23 Q. Okay. And on Page 8 of the agreement,
24 CVS Pharmacy, Inc. agreed to the settlement

1 terms in July of 2018, is that right?

2 A. What page were you on?

3 Q. Page 8, the very last page of the
4 agreement.

5 A. Yes, yes, signed in July.

6 Q. Signed by Betsy Ferguson again, is
7 that right?

8 A. And John Gilbert, our outside
9 attorney.

10 Q. Okay.

11 A. Who is at Hyman, Phelps.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED] [REDACTED]

[illegible]

[illegible]

[illegible]

[illegible]

Category	Percentage
1. Very satisfied	85%
2. Satisfied	80%
3. Dissatisfied	15%
4. Very dissatisfied	85%
5. Don't know	80%
6. Very satisfied	95%
7. Satisfied	85%
8. Dissatisfied	10%
9. Very dissatisfied	80%
10. Don't know	25%
11. Very satisfied	85%
12. Satisfied	85%
13. Dissatisfied	10%
14. Very dissatisfied	85%
15. Don't know	15%
16. Very satisfied	85%
17. Satisfied	85%
18. Dissatisfied	10%
19. Very dissatisfied	85%
20. Don't know	15%
21. Very satisfied	85%
22. Satisfied	85%
23. Dissatisfied	10%
24. Very dissatisfied	85%
25. Don't know	15%
26. Very satisfied	85%
27. Satisfied	85%
28. Dissatisfied	10%
29. Very dissatisfied	85%
30. Don't know	15%
31. Very satisfied	85%
32. Satisfied	85%
33. Dissatisfied	10%
34. Very dissatisfied	85%
35. Don't know	15%
36. Very satisfied	85%
37. Satisfied	85%
38. Dissatisfied	10%
39. Very dissatisfied	85%
40. Don't know	15%
41. Very satisfied	85%
42. Satisfied	85%
43. Dissatisfied	10%
44. Very dissatisfied	85%
45. Don't know	15%
46. Very satisfied	85%
47. Satisfied	85%
48. Dissatisfied	10%
49. Very dissatisfied	85%
50. Don't know	15%
51. Very satisfied	85%
52. Satisfied	85%
53. Dissatisfied	10%
54. Very dissatisfied	85%
55. Don't know	15%
56. Very satisfied	85%
57. Satisfied	85%
58. Dissatisfied	10%
59. Very dissatisfied	85%
60. Don't know	15%
61. Very satisfied	85%
62. Satisfied	85%
63. Dissatisfied	10%
64. Very dissatisfied	85%
65. Don't know	15%
66. Very satisfied	85%
67. Satisfied	85%
68. Dissatisfied	10%
69. Very dissatisfied	85%
70. Don't know	15%
71. Very satisfied	85%
72. Satisfied	85%
73. Dissatisfied	10%
74. Very dissatisfied	85%
75. Don't know	15%
76. Very satisfied	85%
77. Satisfied	85%
78. Dissatisfied	10%
79. Very dissatisfied	85%
80. Don't know	15%
81. Very satisfied	85%
82. Satisfied	85%
83. Dissatisfied	10%
84. Very dissatisfied	85%
85. Don't know	15%
86. Very satisfied	85%
87. Satisfied	85%
88. Dissatisfied	10%
89. Very dissatisfied	85%
90. Don't know	15%
91. Very satisfied	85%
92. Satisfied	85%
93. Dissatisfied	10%
94. Very dissatisfied	85%
95. Don't know	15%
96. Very satisfied	85%
97. Satisfied	85%
98. Dissatisfied	10%
99. Very dissatisfied	85%
100. Don't know	15%

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15 Q. And would you review any of the
16 letters or documentation provided by the DEA to
17 CVS related to those investigations before you
18 executed the document?

19 MR. DELINSKY: Object to form.

20 A. Not that I recall. Not typically.
21 Typically it would be more a conversation with
22 the attorney. I'm sure on some occasions I
23 would have some of the background, either -- you
24 know, sometimes I would be involved -- like in

1 this case I would be in providing a declaration
2 earlier in the matter, so I might have been
3 involved then. For the signing of this
4 particular settlement agreement, I think it
5 would have just been a conversation with the
6 attorneys.

7 Q. Was this approved by anyone at CVS
8 Pharmacy?

9 A. It was signed by Josh Flum, who was
10 senior vice president. I think at the time he
11 was pharmacy operations. But again, it would be
12 one attorney or group of attorneys. I'm not
13 sure who handled it. They would have been
14 handing the matter and would have brought it to
15 both me and Josh to sign.

16 Q. And who would those attorneys be at
17 CVS?

18 A. It varies, but Betsy Ferguson was head
19 of the area, so it would be her and other
20 attorneys in her group.

21 Q. But in settlement of the Oklahoma
22 investigation, CVS agreed to pay \$11 million,
23 and you executed that settlement agreement on
24 behalf of Oklahoma CVS, is that right?

1 MR. DELINSKY: Object to form.

2 A. That's correct. That's what
3 Paragraph 15 says.

4 BY MR. ELSNER:

5 Q. There was also an investigation by the
6 DEA of CVS stores in Rhode Island, is that
7 right?

8 MR. DELINSKY: Object to form.

9 A. Others are involved in the various
10 investigations. I'm generally aware that there
11 was one in Rhode Island.

12 BY MR. ELSNER:

13 Q. Okay. This is MR 225. This is
14 Exhibit 19, Mr. Moffatt.

15 (Whereupon, CVS-Moffatt-19 was marked
16 for identification.)

17 BY MR. ELSNER:

18 Q. If you turn to Page 3 of 7 of the
19 settlement agreement, paragraph I, it states,
20 does it not, that "Between October 18, 2013 and
21 March 2, 2015, the DEA Providence Resident
22 Office conducted an investigation into CVS'
23 dispensing of prescriptions from Rhode Island
24 CVS/pharmacy retail stores." Is that right?

1 A. Yes, that's what paragraph I says.

2 Q. Did you have a role with respect to
3 CVS stores and pharmacies -- were you president
4 or secretary or treasurer of that entity?

5 MR. DELINSKY: Object to form.

6 A. I would have been president of the
7 Rhode Island entity, yes.

8 BY MR. ELSNER:

9 Q. And what is that entity called?

10 A. I have to look it up, but something
11 along the lines of Rhode Island CVS Pharmacy,
12 LLC.

13 Q. Do you know the name sitting here
14 today?

15 A. I don't. We have separate store
16 entities in each state, sometimes multiple, so I
17 don't know exactly the name of the entity.
18 Sometimes it's just Rhode Island CVS, sometimes
19 it's CVS Rhode Island, it varies a little bit.

20 Q. In paragraph J it states that "The
21 United States contends that it has certain civil
22 and administrative claims under the Act," this
23 is the Controlled Substances Act, and "it's
24 implementing regulations based on CVS' conduct

1 in Rhode Island CVS/pharmacy retail stores
2 between the 3rd of March, 2010 and the date of
3 this agreement," and then it goes on to list
4 certain conduct which includes "Filling
5 prescriptions with invalid prescriber DEA
6 numbers, or under circumstances where the
7 pharmacist filling the prescription knew or had
8 reason to know that the prescription in question
9 was invalid or unauthorized."

10 Did I read that correctly?

11 A. That's what Paragraph 1 says.

12 Q. In Paragraph 2 for "Filling
13 prescriptions for Schedule III controlled
14 substances written by psychiatric nurse
15 practitioners who were not authorized under
16 state law or by the terms of their DEA
17 registration to issue such prescriptions," is
18 that right?

19 A. That's what Paragraph 2 says.

20 Q. Okay. And third that "Entering,
21 creating, or maintaining CVS dispensing records,
22 including prescription vial labels, in which the
23 DEA registration numbers of non-prescribing
24 practitioners, including non-prescribing

1 practitioners who were not really authorized to
2 prescribe the substances dispensed, were
3 substituted for the DEA registration numbers of
4 prescribing practitioners, in violation of the
5 Controlled Substances Act," is that right?

6 A. That's what Paragraph 3 says, yes.

7 Q. Were you aware that the DEA had made
8 such contentions with respect to CVS stores in
9 Rhode Island based on your role as the president
10 of the CVS entity in Rhode Island covering those
11 stores?

12 MR. DELINSKY: Object to form.

13 A. No. Others at CVS would have been
14 responsible for this sort of investigation, and
15 for the settlement, so I was not involved in
16 preparing this document or in the investigation.

17 BY MR. ELSNER:

18 Q. Okay. And CVS agreed to pay in
19 settlement of these claims \$450,000 to the
20 United States Government, is that right?

21 A. That's what Paragraph 1 on Page 4
22 says.

23 Q. Were you aware of that as the
24 president of the CVS Rhode Island entity

1 concerning these stores?

2 MR. DELINSKY: Object to form.

3 A. I was not involved in preparing any of
4 this or in the amount that was agreed upon. To
5 the extent I knew about it, it was because of my
6 role as an attorney as opposed to because I'm
7 president of the store entity.

8 BY MR. ELSNER:

9 Q. They wouldn't have informed you as
10 president of the store entity that a settlement
11 had been reached?

12 MR. DELINSKY: Object to form.

13 A. They informed me because I'm an
14 attorney. I'm also president of the entity. I
15 don't know if they would have informed somebody
16 else if somebody else was the president, but
17 they did inform me.

18 BY MR. ELSNER:

19 Q. Okay. And Betsy Ferguson executed
20 this document on August 5, 2015, Page 7 of 7?

21 A. Yes, she did. August 5th.

22 Q. Were you aware that the DEA had
23 conducted investigations of CVS pharmacies in
24 California, in Nassau and Suffolk County, New

1 York, and also in -- related to the theft of
2 controlled substances and the failure to report
3 those thefts to the DEA promptly?

4 MR. DELINSKY: Object to form.

5 A. Others at CVS are involved in all of
6 the government investigations, so I may have
7 heard of those matters through my role as an
8 attorney, but other people were primarily
9 responsible for that sort of investigation and
10 the circumstances behind them.

11 BY MR. ELSNER:

12 Q. Okay. This is Motley Rice 226, which
13 is Exhibit 20 to your deposition.

14 (Whereupon, CVS-Moffatt-20 was marked
15 for identification.)

16 BY MR. ELSNER:

17 Q. This is the settlement agreement
18 between CVS and the DEA related to its
19 investigation in California.

20 If you turn to paragraph F, which is
21 on Page 2 of the agreement, describes that the
22 DEA Sacramento field office, and U.S. Attorney's
23 Office for the Eastern District of California
24 conducted an investigation with respect to

1 CVS/pharmacy retail stores and their compliance
2 with the Controlled Substances Act, it reads
3 "specifically investigating the recordkeeping,
4 reporting, procedures to guard against theft and
5 diversion, and certain dispensing practices
6 of...CVS Pharmacy Retail Stores in the Eastern
7 District of California." Is that right?

8 MR. DELINSKY: Object to form.

9 A. I was not involved in preparing this,
10 but that appears to summarize paragraph F.

11 BY MR. ELSNER:

12 Q. Okay. Were you aware that the DEA was
13 concerned with thefts of controlled substances
14 across the country?

15 A. Others at CVS are responsible for both
16 the investigation and for operations and
17 compliance with what would be involved in this
18 sort of activity. I was not.

19 Q. If you turn to paragraph J, which is
20 on Page 3, it reads that "CVS acknowledges that,
21 during the period" -- do you see where I'm at at
22 the bottom of Page 3, paragraph J?

23 A. Yes.

24 Q. "CVS acknowledges that, during the

1 period from April 30, 2011 through April 30,
2 2013, certain Eastern District of California CVS
3 Pharmacy Retail Stores failed to fulfill certain
4 recordkeeping obligations under the CSA in a
5 manner fully consistent with CVS's compliance
6 obligations."

7 Did I read that correctly?

8 MR. DELINSKY: Object to form.

9 A. You did read that sentence correctly,
10 but the next sentence starts with
11 "Notwithstanding," so I take it that's going to
12 say something different.

13 BY MR. ELSNER:

14 Q. It might.

15 But were you aware that CVS
16 acknowledged during this period that those
17 recordkeeping violations existed?

18 MR. DELINSKY: Object to form.

19 A. It appears that we acknowledged it,
20 but we contend that a failure to fulfill those
21 recordkeeping obligations did not arise or did
22 not cause the diversion of controlled
23 substances.

24 BY MR. ELSNER:

1 Q. Why did CVS admit that there were
2 recordkeeping violations, but contend that those
3 did not arise from or cause the diversion of
4 controlled substances?

5 MR. DELINSKY: Object to the form of
6 the question to the extent that would require --
7 if you know the answer, if you possess
8 responsive information, to the extent it would
9 call you to divulge attorney/client privilege
10 information or work product, and I ask that you
11 not answer and instruct you accordingly.

12 A. So I wasn't involved in the
13 investigation. I don't know any particulars as
14 to why we would do that. I could speculate, but
15 would not be advised to do so, I'm sure.

16 BY MR. ELSNER:

17 Q. So the reason you read that sentence
18 was not because you had any personal information
19 about it?

20 A. No, I just think it presents a fuller
21 picture. And it also says the United States
22 does not contend to the contrary, so the United
23 States --

24 Q. Did CVS --

1 A. -- wasn't forcing the issue either.

2 Q. Well, CVS did acknowledge that there
3 were recordkeeping violations related to thefts
4 of controlled substances in its California
5 stores, is that right?

6 MR. DELINSKY: Object to form.

7 A. I don't think it says anything related
8 to thefts. It says "failed to fulfill certain
9 recordkeeping obligations." I know that that
10 can sometimes be timing, you filed it a day
11 late, you gave the information but because it's
12 not filed within a certain time frame, I could
13 see where that might be something that they
14 would say, yet technically it's a recordkeeping
15 violation, but it's -- you know, it wouldn't
16 rise to the level of causing a diversion of
17 controlled substances.

18 BY MR. ELSNER:

19 Q. If you look just above on Page 3 under
20 the various bullets, it states that "The United
21 States also contends that various EDCA CVS
22 Pharmacy Retail Stores failed to provide
23 effective controls and procedures to guard
24 against theft and diversion of controlled

1 substances."

2 Did I read that correctly?

3 A. That is the contention that's there,
4 yes.

5 Q. So it relates to thefts of controlled
6 substances and the reporting obligations
7 consistent with that, is that right?

8 MR. DELINSKY: Object to form.

9 A. Again, I'm not involved in the
10 preparation of this, you know, some of the
11 things above that -- what you just read, failed
12 to record the amount or the date or to do order
13 forms, that sort of thing, and then it says
14 "United States also contends." So what's in
15 paragraph J, I don't know that we're agreeing
16 that we -- that we notified -- I kind of got
17 lost there.

18 Our recordkeeping obligations, our
19 failure to fulfill recordkeeping obligations did
20 not arise from or cause diversion of controlled
21 substances.

22 BY MR. ELSNER:

23 Q. CVS agreed to pay a \$5 million fine in
24 resolution of this investigation by the DEA, is

1 that right?

2 A. That's what Paragraph 1 says on
3 Page 4.

4 Q. And did you have a role as either
5 president or secretary or treasurer for the --

6 MR. DELINSKY: I apologize. I just
7 want to object to the form of the prior
8 question.

9 BY MR. ELSNER:

10 Q. Did have you a role as either
11 president, secretary, or treasurer of any of the
12 CVS stores in the Eastern District of California
13 which were the subject of this settlement?

14 MR. DELINSKY: Object to form.

15 A. So not with respect to the store, with
16 respect to the entities I would have a role.
17 Depends on the time frame and what entity we're
18 talking about, but I would have had an officer
19 role with the store entities. I was not
20 involved in the investigation or the settlement
21 or anything like that.

22 BY MR. ELSNER:

23 Q. Were you the president of the
24 California entity?

1 A. What time frame are we talking about?

2 Q. Well, I think we can talk about two
3 time frames. The agreement was executed in June
4 of 2017.

5 A. So today I am president of -- we have
6 multiple store entities in California, and I'm
7 president of both of those. It looks like the
8 entire time frame because it talks about on
9 Page 2 early 2012, so that would be when I
10 became president when my predecessor retired.

11 Q. So as of May, 2012 through 2000 --
12 well, through today, you've served as the
13 president of the California entities over these
14 pharmacies, is that right?

15 A. That's correct.

16 Q. Okay. And were you made aware as
17 president of the CVS entities in California, of
18 these CVS pharmacies, that a settlement had been
19 reached with the DEA?

20 MR. DELINSKY: Object to form.

21 A. Others at CVS were responsible for
22 operations and compliance and the people that --
23 they were informed, and I as an attorney would
24 be aware of it, but not -- I wasn't informed of

1 something because I was president.

2 BY MR. ELSNER:

3 Q. Do you know how many thefts occurred
4 at CVS Pharmacy stores in California of
5 controlled substances prior to and during this
6 period?

7 A. Others are responsible for that sort
8 of information. I don't have that information.

■ ■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ ■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ ■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ ■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ ■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

Category	Percentage
1	100%
2	95%
3	100%
4	100%
5	100%
6	90%
7	45%
8	100%
9	100%
10	85%
11	100%
12	100%
13	95%
14	100%
15	100%
16	85%
17	100%
18	100%
19	100%
20	100%
21	100%
22	100%
23	100%
24	100%
25	100%
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17 (Whereupon, CVS-Moffatt-21 was marked
18 for identification.)

19 BY MR. ELSNER:

20 Q. This is Exhibit 21, which is the
21 settlement agreement between CVS and the DEA,
22 and this is dated December of 2015. If you look
23 at Paragraph 7.

24 A. Paragraph 1 is wrong. I can't help

1 it.

2 What is it? Which paragraph?

3 Q. Paragraph 7.

4 A. 7, okay. Okay.

5 Q. Sorry, what was wrong about
6 Paragraph 1?

7 A. "CVS is incorporated in Delaware."
8 It's incorporated in Rhode Island. So it's
9 referring to CVS Pharmacy, Inc.

10 Q. It's fair to say CVS's corporate
11 structure is pretty complicated, is that right?

12 MR. DELINSKY: Object to form.

13 A. It's -- we have a lot of entities,
14 yes, I'd agree with that.

15 BY MR. ELSNER:

16 Q. How many entities?

17 A. Right now? Roughly a thousand.

18 Q. And how many of those entities do you
19 serve as a president or officer of?

20 A. I'd have to generate a report. I'm
21 not sure.

22 Q. What's your best estimate?

23 MR. DELINSKY: Objection. Asked and
24 answered.

1 A. Hundreds of those, not all of them,
2 but a large number of them.

3 BY MR. ELSNER:

4 Q. Did it -- let's go back to the
5 document.

6 Paragraph 7 of the settlement
7 agreement. It reads "The United States contends
8 that it has certain civil claims against CVS for
9 engaging in the following conduct from
10 January 1, 2013 through October 23, 2014." And
11 it then states that "On October 15, 2014, DEA
12 issued a Notice of Inspection to CVS Pharmacy
13 5667," which is in Houston, Texas, "after that
14 pharmacy had reported a theft of over 40,000
15 dosage units of controlled substances by two
16 former employees."

17 Were you aware that there was a 40,000
18 dosage unit theft of controlled substances from
19 the CVS store in Houston, Texas?

20 MR. DELINSKY: Object to form.

21 A. I'm not responsible for this sort of
22 investigation or activity, so I was not
23 informed. Others at CVS that would be
24 responsible for this would have been informed.

1 BY MR. ELSNER:

2 Q. Did you serve as an officer of any of
3 the CVS -- of this CVS Pharmacy in Houston,
4 Texas in 2013 and '14?

5 A. During the time frame, I believe so,
6 yes.

7 Q. Okay. Do you know the name of that
8 entity?

9 A. The Texas stores are actually operated
10 by CVS Pharmacy, Inc.

11 MR. DELINSKY: Would that change your
12 answer as to whether or not you were an officer?

13 A. So I am an officer of CVS Pharmacy,
14 Inc., vice president and secretary.

15 MR. ELSNER: Asked and answered, Eric.

16 MR. DELINSKY: I was trying to clear
17 it up for myself.

18 BY MR. ELSNER:

19 Q. There were also a listing of
20 recordkeeping -- allegations of recordkeeping
21 violations with respect to that theft, is that
22 right, under 1, 2, and 3, beneath it?

23 A. Yes.

24 Q. Okay. And as a result of this

1 investigation, CVS agreed to pay a settlement in
2 the amount of \$345,000 in Paragraph 13 on
3 Page 4, is that right?

4 MR. DELINSKY: Object to form.

5 A. Paragraph 13 on Page 4 refers to a sum
6 of \$345,000.

7 BY MR. ELSNER:

8 Q. Were you made aware of that as the
9 president of CVS Texas entity?

10 MR. DELINSKY: Object to form.

11 BY MR. ELSNER:

12 Q. I'm sorry, as the president of CVS
13 Pharmacy?

14 MR. DELINSKY: Object to form.

15 BY MR. ELSNER:

16 Q. Were you made aware of the amount of
17 the settlement?

18 A. I was vice president and secretary of
19 CVS Pharmacy. I -- others would be responsible
20 for this settlement. To the extent I learned
21 about it, it would have been as an attorney.

22 Q. If I could show you the next exhibit.

23 There was also an investigation of CVS
24 in Nassau and Suffolk County, New York on Long

1 Island between 2013 and 2015 concerning thefts
2 of controlled substances and reporting
3 violations. Were you aware of that?

4 A. Yes, I was aware of that.

5 Q. This is Exhibit 22.

6 (Whereupon, CVS-Moffatt-22 was marked
7 for identification.)

8 BY MR. ELSNER:

9 Q. This is Motley Rice 242.

10 Can you tell me what it is you
11 remember about this?

12 A. I remember we settled it fairly
13 recently, although the conduct, as you said, was
14 from several years back, and I recall, I think,
15 I signed -- yeah, I signed this one.

16 Q. You executed this on behalf of what
17 entity?

18 A. CVS Pharmacy, Inc.

19 Q. And that was the company controlling
20 the CVS Pharmacy, the subject of this
21 investigation pharmacies, is that right?

22 A. Actually, no. So it appears from
23 here, it says A, settlement, "CVS Pharmacy, Inc.
24 is a Rhode Island corporation with its corporate

1 headquarters in Woonsocket, Rhode Island. CVS
2 directly or indirectly operates CVS retail
3 pharmacies in Nassau and Suffolk Counties."

4 So the entity that actually operates
5 stores in New York is called CVS Albany, LLC.
6 CVS Pharmacy, Inc. is its parent.

7 Q. Are you an officer of CVS Albany?

8 A. Yes.

9 Q. President?

10 A. I am president of CVS Albany.

11 Q. And was that true for the time period
12 concerning this investigation, which is between
13 February of 2013 and January of 2015?

14 A. Yes.

15 Q. And the investigation here concerned
16 the failure to promptly report a theft of a
17 controlled substance from these stores, is that
18 right?

19 MR. DELINSKY: Object to form.

20 A. Another attorney would have been
21 involved in the whole matter. So, you know, I
22 was brought in at the end, as I discussed
23 earlier, you know, so, you know, I was consulted
24 at the end when it needed to be signed. But I

1 didn't have -- I wasn't directly involved in
2 this, so I don't recall the particulars. Well,
3 I didn't know the particulars.

4 BY MR. ELSNER:

5 Q. Well, CVS agreed to pay in settlement
6 of this matter \$1.5 million, is that right,
7 Page 2?

8 A. Yeah, Page 2, Paragraph 1.

9 Q. Is that correct?

10 A. That is correct.

11 Q. Okay. And you signed this settlement
12 agreement?

13 A. Yes.

14 Q. Other than the settlement agreement
15 itself, did you review any documents before you
16 executed this agreement?

17 A. Another attorney would have been
18 responsible for the entire matter. I don't
19 recall if I reviewed any documents. I had a
20 discussion certainly with the attorney when I
21 was asked to sign it.

22 Q. Who was the attorney?

23 A. I believe it was Mark Vernazza.

24 Q. And he's employed by CVS, is that

1 right?

2 A. Yes, CVS Pharmacy.

3 Q. CVS Pharmacy, Inc.

4 Did Mark show you any documents before
5 you executed the agreement?

6 MR. DELINSKY: Objection. Asked and
7 answered.

8 A. I don't recall if he showed me
9 anything.

10 BY MR. ELSNER:

11 Q. Did Mark share with you what the DEA
12 had found concerning the thefts and the
13 reporting from these CVS Pharmacy stores?

14 MR. DELINSKY: Object to form. And I
15 instruct the witness not to answer on the
16 grounds that that would involve attorney/client
17 privileged information.

18 MR. ELSNER: So what I've asked him is
19 I've asked him whether he, Mark Vernazza, shared
20 with the witness what the DEA had found
21 concerning thefts in the reporting violations,
22 and you're asserting privilege over the DEA's
23 findings and facts, is that my understanding?

24 MR. DELINSKY: I'm asserting privilege

1 as a result of the following circumstances.
2 Mr. Moffatt has testified that he doesn't recall
3 reviewing any documents in connection with his
4 signing the settlement agreement, so by
5 definition the only way that information could
6 have been conveyed to Mr. Moffatt would have
7 been through an attorney reflecting that
8 attorney's mental impressions upon hearing or
9 reading, depending on the facts, what the DEA
10 told him. So on that basis I am asserting
11 privilege.

12 I think the manner in which to proceed
13 here would be for you to ask Mr. Moffatt if he
14 obtained any information from the attorney that
15 was separate from or in addition to the
16 information already contained in the settlement
17 agreement so we at least can see if there's even
18 a dispute.

19 BY MR. ELSNER:

20 Q. Did you obtain any information
21 regarding the allegations here by the DEA above
22 and beyond what's written in the settlement
23 agreement?

24 A. I don't recall getting any other

1 information.

2 Q. Did you ask for any?

3 A. I don't recall what we specifically
4 discussed.

5 Q. This was just in June of last year,
6 it's not a particularly old event, and you said
7 you did have a recollection of it. So did
8 you -- did you personally discuss any of these
9 matters with anyone at the DEA?

10 A. No. Mark or someone on Betsy's team
11 would be responsible for this sort of matter.

12 Q. Did the DEA provide CVS with any
13 document describing its findings that you're
14 aware of?

15 MR. DELINSKY: Object to form.

16 You may answer.

17 A. I wouldn't have been involved, so I
18 don't know what the DEA would have provided.

19 BY MR. ELSNER:

20 Q. Did you ask Mr. Vernazza if there were
21 any documents provided by the DEA?

22 A. I did not ask him if there were
23 documents provided, not that I recall.

24 Q. Did you -- did Mr. Vernazza, yes or

1 no, tell you what the DEA findings were with
2 respect to these CVS stores in Long Island?

3 MR. DELINSKY: Objection. Asked and
4 answered.

5 A. In connection with signing this we had
6 discussions, but I don't recall specifically
7 what he told me about the contentions or, you
8 know, any conclusions.

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21 Q. Are you aware that there was a DEA
22 investigation of CVS in Connecticut?

23 A. I don't -- I wouldn't have been
24 involved in that. Others would have handled it.

1 I don't specifically recall Connecticut.

2 MR. DELINSKY: And, Mike, you'd
3 previously indicated that you hoped to finish by
4 1:00 or earlier. It's now 1:20. Could you give
5 us a sense of where you are? We've been going
6 an hour. I'm just trying to --

7 MR. ELSNER: There are three
8 additional settlements I want to address and ask
9 some wrap-up questions. So I'm happy to take a
10 break now if you want to do that, if you want to
11 take a break and go to lunch, we could do that.
12 But it took a little longer than I anticipated,
13 so...

14 MR. DELINSKY: Can you give us an
15 estimate? If it's a half hour, it's one thing.
16 If it's another hour, that's another.

17 MR. ELSNER: Why don't we go off the
18 record and discuss it.

19 THE VIDEOGRAPHER: We're going off the
20 record at 1:21 p.m.

21 (Whereupon, a recess was taken.)

22 THE VIDEOGRAPHER: We're back on the
23 record at 1:31 p.m.

24 BY MR. ELSNER:

1 Q. Mr. Moffatt, before we broke I had
2 shared with you Exhibit 23, which is the
3 settlement agreement between CVS and the DEA
4 concerning the DEA's investigation of CVS stores
5 in Connecticut, is that right?

6 (Whereupon, CVS-Moffatt-23 was marked
7 for identification.)

8 MR. DELINSKY: Object to form.

9 A. Yeah, it appears to be stores in these
10 two cities, Southington and New Britain.

11 BY MR. ELSNER:

12 Q. And the DEA had determined that the
13 Southington store on at least 2,886 occasions
14 that CVS failed to keep paper Schedule III
15 through Schedule V prescriptions, and invoices
16 on 31 occasions with respect to the Southington
17 store and with respect to the New Britain store.
18 In Paragraph 3 the US determined that on 4,936
19 instances CVS failed to keep paper Schedule III
20 through V prescriptions in a readily retrievable
21 manner from other prescriptions in the pharmacy.
22 Is that right?

23 MR. DELINSKY: Object to form.

24 A. I wasn't involved in this

1 investigation at all, but that appears to be a
2 summary of that paragraph.

3 BY MR. ELSNER:

4 Q. And CVS entered a settlement with the
5 DEA and agreed to pay \$600,000 in settlement, is
6 that right?

7 A. That's in Section III, Paragraph 1.
8 Again, I wasn't involved in this.

9 Q. Were you aware that CVS agreed to
10 settle these -- this investigation with the DEA
11 in that amount of \$600,000?

12 A. I have no specific recollection of
13 this matter. To the extent I learned anything
14 about it, it would have been through discussions
15 between attorneys.

16 Q. And the settlement agreement was
17 executed on behalf of Connecticut CVS Pharmacy,
18 LLC by Betsy Ferguson, the president and deputy
19 general counsel for CVS Health Corporation, is
20 that right?

21 A. That's what her signature block says,
22 yes.

23 MR. DELINSKY: I believe it says
24 senior vice president.

1 MR. ELSNER: Senior vice president.

2 A. Yes.

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15 Q. There was also an investigation, I
16 believe, of CVS stores in Massachusetts
17 regarding the prescription monitoring program.
18 Are you aware of that?

19 A. That's not my area. I'm not sure.

20 Q. Did you know that CVS pharmacies in
21 Massachusetts didn't have access to the internet
22 so they couldn't operate the prescription
23 monitoring program?

24 MR. DELINSKY: Object to form.

1 A. Others in CVS would be responsible for
2 what access the stores had. I have no knowledge
3 about that.

4 BY MR. ELSNER:

5 Q. Were you aware that there was a second
6 investigation by the DEA into CVS's operations
7 in Texas concerning filling prescriptions for a
8 physician that was not properly licensed?
9 Exhibit 25.

10 (Whereupon, CVS-Moffatt-25 was marked
11 for identification.)

12 A. It's Paragraph 7 you're talking about?

13 BY MR. ELSNER:

14 Q. Yes.

15 A. I see what Paragraph 7 says, yes.

16 Q. Okay. So the DEA was investigating
17 CVS pharmacies in Texas for filling
18 prescriptions for a Dr. Pedro Garcia, and it was
19 discovered that he didn't have a valid license
20 to prescribe those substances, correct?

21 MR. DELINSKY: Object to form.

22 A. It says that his Texas Department of
23 Public Safety controlled substances registration
24 was expired.

1 BY MR. ELSNER:

2 Q. And CVS filled 153 of those
3 prescriptions?

4 A. That's what Paragraph 7 indicates.

5 Q. And as a result CVS entered into a
6 settlement with the DEA in Paragraph 13 on
7 Page 4 and agreed to pay \$1,912,500 to the DEA,
8 is that right?

9 MR. DELINSKY: Object to form.

10 A. That's what Paragraph 13 says. Again,
11 I had no involvement in the settlement or the
12 underlying matter.

13 BY MR. ELSNER:

14 Q. And it was executed by Betsy Ferguson
15 on behalf of CVS in August of 2014, is that
16 right, Page 7?

17 A. Yes. CVS, in this case CVS Pharmacy,
18 Inc., yes.

19 Q. And did you play a role with respect
20 to being an officer of the CVS entity in Texas
21 responsible for this CVS store?

22 A. So that's CVS Pharmacy, Inc., again
23 vice president, secretary, assistant general
24 counsel.

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16 MR. ELSNER: I don't think I have any
17 further questions at this time. I do think,
18 though, that there were certain questions that I
19 believe should have been answered and were not
20 on the basis of a privilege, and I'm going to
21 reserve the rest of my time in the event that we
22 decide to raise that issue with the court.

23 MR. DELINSKY: Okay.

24 MR. ELSNER: Do you have any

1 questions?

2 MR. DELINSKY: Nothing further.

3 MR. DAWSON: No questions.

4 THE VIDEOGRAPHER: This concludes the
5 videotaped deposition of Thomas Moffatt. The
6 time is 1:56 p.m., and we are now off the
7 record.

8 (Whereupon, the deposition was
9 concluded.)

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1 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

2

3 I, MAUREEN O'CONNOR POLLARD, RMR, CLR,

4 and Commissioner in the State of Rhode Island

5 and Providence Plantations, do certify that on

6 the 15th day of January, 2019, at 8:04 o'clock,

7 the person above-named was duly sworn to testify

8 to the truth of their knowledge, and examined,

9 and such examination reduced to typewriting

10 under my direction, and is a true record of the

11 testimony given by the witness.

12 I further certify that I am neither

13 attorney, related or employed by any of the

14 parties to this action, and that I am not a

15 relative or employee of any attorney employed by

16 the parties hereto, or financially interested in

17 the action.

18 In witness whereof, I have hereunto

19 set my hand this 17th day of January, 2019.

20

21

22 _____
COMMISSIONER

23 My Commission Expires April 30, 2020

24

INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it. It will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

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ACKNOWLEDGMENT OF DEPONENT

I, _____, do
Hereby certify that I have read the foregoing
pages, and that the same is a correct
transcription of the answers given by me to the
questions therein propounded, except for the
corrections or changes in form or substance, if
any, noted in the attached Errata Sheet.

THOMAS S. MOFFATT

DATE

Subscribed and sworn

To before me this

_____ day of _____, 20____.

My commission expires: _____

Notary Public

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